

TSCA Transformed! Reformed at Last!

On Wednesday, June 22, 2016, President Obama signed the *Frank R. Lautenberg Chemical Safety for the 21st Century Act* ("Pub. L. No. 114-182") into law, asserting "[i]f we can get this bill done, it means that somewhere out there on the horizon, we can make our politics less toxic as well."^[1] Indeed, as we have reported in earlier publications, Pub. L. No. 114-182 is a bipartisan, bicameral compromise that fully overhauls the forty-year old Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601, et. seq., thereby fundamentally altering the way the United States handles potentially toxic substances. While past attempts at reform have fallen short of a President's desk, in the course of a year, Pub. L. No. 114-182 has changed this trend.

On June 23, 2015, [the House voted in favor of TSCA reform 398-1](#), passing H.R. 2576 by an overwhelming majority. Six months later, on December 17, 2015, [the Senate responded by passing H.R. 2576 by substitution amendment](#), meaning the Senate replaced the entirety of H.R. 2576's text with the text from its Senate counterpart, S. 697. While these bills shared common features, two major differences stood out – namely, preemption and new chemical screening. After a series of bicameral and bipartisan negotiations and discussions, however, the Senate's initially more controversial and far-reaching rules on preemption and new chemical screening made it into the bill's compromise language.

Once this "final compromise bill" came to fruition, it did not take long for the House to take it up for a vote, and on May 24, 2016, it was again approved by an overwhelming majority, this time 403-12. Two weeks later, the Senate agreed with the House and approved the compromise language by voice vote. By June 14, 2016, the *Frank R. Lautenberg Chemical Safety for the 21st Century Act* was presented to the President, who made it law by signing it on June 22, 2016. Reflecting the true nature of the compromises across interests and party lines to achieve this reform, representatives from the American Chemical Council, S.C. Johnson, the March of Dimes, the Environmental Defense Fund, and members of Congress from both the Republican and the Democratic Parties were present for President Obama's signature.

Key elements of this law reforming TSCA include:

- A mandate that EPA review each new chemical and make an affirmative determination as to its risks before the chemical can enter the marketplace;
- Consideration of populations more susceptible to potential exposure or risks of exposure from certain chemicals;
- Removal of costs as a permissible consideration when determining a chemical's riskiness – the test is now whether the substance at issues presents an "unreasonable risk of injury," without regard to cost factors; and
- Preemption of state law from the initiation of EPA risk evaluation through final determination.

Reflecting the aggressive timetables for rulemaking by EPA required by this reform, the agency has already issued its [first-year implementation plan for the new law](#). Thus, from Republicans to Democrats, Congressional leaders to industry and special interest groups, and the Legislative to the Executive branches, TSCA reform has shifted from a priority to a reality.

For more information, please contact: [Thomas R. Smith](#), [Richard L. Weber](#), [Liza R. Magley](#), any of the [attorneys](#) in our [Toxic Tort and Environmental Litigation Practice](#), or the attorney in the firm with whom you are regularly in contact.

[1] U.S. Senate Committee on Environment and Public Works, "President Obama Signs TSCA Reform Bill Into Law," C-SPAN (June 22, 2016) available at <http://www.epw.senate.gov/public/index.cfm/audio-video-rep?ID=977D2BE3-E96E-436F-A913-A980BF8E7B94>.



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