

## Udall-Vitter Bill (S.697) Would Seriously Weaken State Authority to Regulate Toxic Chemicals

Proposed legislation would significantly expand federal preemption of the States in the Toxic Substances Control Act (TSCA)

Policy	Current Law	Udall-Vitter	Impact on the States
<b>Savings Clause</b>	Allows a States to freely regulate chemicals <i>unless</i> explicitly preempted by TSCA	Preempts a State from regulating chemicals <i>unless</i> explicitly allowed by TSCA	Any uncertainty in State authority would be interpreted in favor of federal preemption
<b>Timing of Preemption</b>	Preempts a State from restricting a chemical <b>upon the final effective date</b> of an EPA rule to restrict that chemical	Preempts a State from restricting a chemical <b>upon naming the chemical a “high priority.”</b> That’s 7 years <i>before</i> the final deadline for EPA action on unsafe chemicals.	Creates a “regulatory void” where States can’t act and EPA hasn’t acted. Unsafe chemicals can escape <i>any</i> action for more than 10 years, after missed deadlines and lawsuits
<b>Co-Enforcement</b>	Allows a State to adopt a rule identical to an EPA rule adopted under TSCA, enabling States to co-enforce the federal law	<b>Eliminates co-enforcement authority for all States</b>	Seriously undermines TSCA enforcement capacity across the country, resulting in less compliance and protection
<b>State Waste Disposal Laws</b>	Always allows a State to restrict the disposal of products containing chemicals, <i>without</i> ever being federally preempted	Preempts a State from restricting a chemical under waste authority if it conflicts or is inconsistent with an EPA rule to restrict that chemical	States have used waste authority to ban the use & disposal of mercury-added products. Similar actions could be preempted in the future
<b>State Phase-Outs</b>	Always allows a State to prohibit the use of a chemical (other than for use in chemical manufacturing)	Only use restrictions adopted <b>prior to Jan. 1, 2015</b> are grandfathered in. Future bans can be preempted.	Now-pending state bans should be grandfathered in if adopted <b>prior to date of enactment</b> of reform
<b>State Waivers</b>	States may apply to EPA for a waiver from preemption if the state restriction doesn’t violate the federal rule, provides a significantly higher degree of protection, <i>and</i> doesn’t unduly burden interstate commerce	States may apply to EPA for a waiver from preemption if <b>there’s compelling State or local conditions</b> , the state restriction does not unduly burden interstate commerce or violate any federal rule, <i>and</i> is based on sound science	Creates a nearly impossible hurdle for States to waive preemption. Toxic chemicals in consumer products affect states uniformly, without creating compelling local conditions like in the case of regional air or water pollution