

Ch. 3 Risk Regulation in the Face of Uncertainty

Note 16, Page 277: Controversy over Implementation of TSCA Reform Legislation

As noted in the casebook, Congress adopted comprehensive legislation overhauling the Toxic Substances Control Act in June 2016. The legislation was a product of bipartisan agreement. On June 24, 2015 the U.S. House of Representatives passed the TSCA Modernization Act (H.R. 2576) by a vote of 398-1. It was supported by the chemical industry, and some of the environmental community. The Environmental Defense Fund, which previously endorsed a TSCA reform bill crafted by Republican Senator David Vitter and the late Democratic Senator Frank Lautenberg, supported the legislation, but some other environmental groups did not believe it was a substantial enough improvement over current law to warrant their support. The bill would require more testing of chemicals and replace the requirement in Section 6 of TSCA that regulation employ the “least burdensome” regulatory option, while requiring EPA to “determine whether technically and economically feasible alternatives that [are more beneficial to] health or the environment . . . will be available as a substitute.” On Dec. 17, 2015 the U.S. Senate approved on a voice vote its own version of TSCA reform legislation called the Frank R. Lautenberg Chemical Safety for the 21st Century Act. There were some significant differences in the bills passed by each house so they had to be reconciled in 2016.

On June 7, 2016 the U.S. Senate by a voice vote passed the Frank R. Lautenberg Chemical Safety for the 21st Century Act. The legislation had passed the U.S. House by a vote of 403-12 on May 24, 2016. President Obama signed the legislation into law on June 22, 2016. This was the first comprehensive updating of TSCA since it was adopted in 1976. The legislation was the product of a bipartisan agreement initially announced in May 2013 by Democratic Senator Frank Lautenberg and Republican Senator David Vitter. The final legislation is named in tribute to Lautenberg, who died suddenly less than two weeks after reaching the agreement. New Mexico Senator Tom Udall became the chief Democratic champion of the legislation after Lautenberg’s death. The legislation requires EPA to set risk-based priorities for testing and evaluation of chemicals and it requires the chemical industry to contribute funding to support such efforts. It was supported by both the chemical industry and major environmental groups, including the Environmental Defense Fund. A few environmentalists and some state officials complained that the legislation was not stringent enough and could preempt state regulations. However, it is widely agreed that the legislation was far better than the existing law, which puts too great a burden on EPA to use cost-benefit to justify regulation and preempts state regulation of chemicals regulated by EPA.

The 8th edition of the casebook describes the provisions of the new legislation. During the Trump administration there has been considerable controversy over EPA’s implementation of the legislation. See Corbin Hair, Rollout of Lautenberg Law Divides Senators Who Championed It, E & E News, April 24, 2018, <https://www.eenews.net/stories/1060079925>. Environmental

groups who supported the legislation are now suing EPA, claiming that it is violating the law in its implementation of it.