# Claims[1] vs. Facts about the Chemical Safety Improvement Act (CSIA)

Claim: ***The safety standard in CSIA is largely the same weak standard that's in the current law, which allows chemicals on the market as long as their risks are "reasonable."*** (EWG)

Response: ***False.*** The safety standard in CSIA is *not* the same flawed safety standard that is currently in place. In fact, CSIA fixes the two main flaws in TSCA's safety standard:

1. Under TSCA, application of EPA's safety standard requires a cost-benefit analysis as the basis for determining whether a risk to human health or the environment is "unreasonable." While CSIA maintains the same "unreasonable risk" language, it redefines the standard as one based solely on the considerations of risk to human health and the environment.
2. TSCA requires EPA not only to consider the cost and benefit of any regulation, but to show that any regulation imposes the "least burdensome" requirements. It was that high bar that largely led the Fifth Circuit to overturn the EPA's ban of asbestos in 1991. CSIA strikes the "least burdensome" requirement altogether. (See page 8 for additional information on this court case.)

Claim: ***The proposed law is worse than the status quo in a number of critical areas and would fail to fix most of the problematic features of current law.*** (EWG)

Response: ***False***. CSIA includes numerous provisions that address the major flaws of TSCA.

- CSIA strikes the "least burdensome" requirement that has crippled TSCA from banning dangerous chemicals, such as asbestos. See the end of the document for an explanation of the court case Corrosion Proof Fittings vs. EPA (1991) that struck down EPA's rule to ban asbestos.
- It would for the first time mandate safety reviews for all chemicals currently in commerce.
- It would for the first time require an affirmative finding of likely safety as a condition for market entry of new chemicals.
- It would for the first time allow EPA to require testing by issuing orders instead of having to use the time- and resource-intensive rulemaking process, and would eliminate the requirement that EPA first show likely risk to high exposure to require testing.
- It would substantially increase access to chemical information by the public, state governments and medical and health professionals that currently cannot be disclosed based on confidential business information claims.

It is the case that the pre-emption of state authority is more expansive than that in the current law, but it should be noted that CSIA also expands the current law's federal authorities. This trade-off between raising the federal floor and limiting state authority needs to be done carefully to strike a balance that provides the political support needed to gain passage while setting forth sound policy and ensuring full protection of human health and the environment.

[1] Claims are taken either verbatim or with minimal changes for clarity that preserve their meaning. See links to original sources following each claim for details.

Claim: ***Without deadlines, it could take EPA years to adequately prioritize, assess, and regulate chemicals.*** (EWG)

Response: ***True.*** The lack of deadlines is a shortcoming of CSIA, since they are necessary to ensure that EPA proceeds in a timely manner to evaluate chemicals and protect public health and the environment. Staff is working to address this issue.

There was concern that too-rigid deadlines might not give EPA the flexibility to properly complete assessments since chemical assessments could vary greatly in the amount of time needed – some chemicals are harder to assess than others and may take more time. Staff is working to address deadlines by imposing more structured timelines, but also allow for some flexibility by allowing for extensions where circumstances warrant.

Claim: ***The bill reflects the agenda of the chemical industry, not the public interest community.*** (EWG)

Response: ***False.*** As one would expect for a compromise bill, there are elements of the agendas of both of these stakeholders. An industry-only bill would have looked very different from the compromise bill that was introduced by Senator Vitter and the late Senator Lautenberg. Based on insights gleaned from years of dialogues and negotiations between health and environmental groups and the industry, the following are examples of provisions originally pushed by industry that are not included in CSIA:

- *Pre-emption*: Many in the industry argued for full-field pre-emption, which would have eliminated all state requirements beginning on the date of enactment of new legislation. In contrast, under CSIA, existing state requirements that restrict or prohibit a chemical remain in place unless and until EPA takes a final action, and other state requirements such as to mandate monitoring or warning labels would never be affected.
- *Safety standard*: Industry has advocated for the adoption of the safety standard used by OSHA, "no significant risk of material harm," which to date has applied only to workers and allows for substantially higher exposures than are deemed acceptable for the general population. Instead, CSIA uses a much-improved version of TSCA's "unreasonable risk" standard (see first claim).
- *New chemicals program*: Industry has resisted any changes to the new chemicals program, which currently consists of a cursory pre-manufacture review and no requirement for an affirmative safety determination before chemicals enter the market. Under CSIA, by contrast, EPA must find that a new chemical is "likely safe" *before* its manufacturing can begin. It is important to note that under current TSCA, once EPA approves a new chemical, it becomes an "existing chemical" and generally can be produced and used for any purpose without prior notification to EPA. If it poses risks, EPA can only address them through its very limited "existing chemical" authority, which sharply restricts EPA's ability to require testing or regulate the chemical. CSIA both requires more evidence of safety prior to market entry and eases EPA's ability to get data and address risks if they emerge later – a major improvement.
- *Immunity from liability*: Some in industry were pressing for full immunity from any liability based on compliance with EPA requirements or an EPA finding of safety. CSIA contains no such provision.

Claim: ***The bill's weak safety standard would require cost-benefit analyses (CBA), and would mean that EPA would not be able to protect people from risky chemicals.*** (EWG)

Response: ***False.*** Only where EPA imposes a total ban or phase-out of all production and use of a chemical (a likely very rare outcome) would it have to "base" that prohibition on costs and benefits; this language is ambiguous but arguably requires EPA to develop a CBA that shows the benefits outweigh the costs on order to pursue such an action. For any other action, EPA has only to "consider" the benefits and costs, something required already by two executive orders issued by Presidents Clinton and Obama.

Important: the bill decouples cost and benefits from the assessment of safety. The safety assessment section explicitly says that it is to be "based solely on considerations of risk to human health and the environment."

Claim: ***No environmental or public health group supports the bill as written, while the chemical industry enthusiastically embraces the proposal.*** (EWG)

Response: ***Misleading.*** There is a spectrum of views across the environmental and public health community. Some groups are in total opposition to the bill. Most groups, however, while expressing varying degrees of support or lack of support for the bill as introduced, are in agreement that this bipartisan bill should serve as the vehicle for TSCA reform, that it can and should be significantly strengthened, and that changes should be made in a way that retains bipartisan support.

Meanwhile, some industry groups have their own concerns with the bill (for example, that pre-emption is not sufficiently far-reaching). Many industry stakeholders do not support the bill as currently drafted because of many compromise provisions.

Claim: ***The new bill does not require a minimum data set, and instead the burden remains on EPA to demand more information when it seeks to assess whether a chemical is safe.*** (EWG)

Response: ***True.*** It is correct that the compromise bill does not require a minimum data set. But importantly, EPA does have the ability to require any data it needs to conduct a safety assessment and safety determination on high-priority chemicals. And, it has authority to identify chemicals with insufficient information as high-priority chemicals, which would activate its authority to require testing. The bill's testing provisions reflect a significant improvement over current law in two key respects: It would for the first time allow EPA to require testing by issuing orders instead of having to use the time- and resource-intensive rulemaking process, and it would eliminate the requirement that EPA first show likely risk to high exposure to require testing.

Claim: ***The bill does not require the EPA or chemical companies to prove that chemicals are safe.*** (EWG)

Response: ***False.*** The bill mandates that EPA find all chemicals either to meet the safety standard (for all high-priority chemicals) or be likely to meet the safety standard (for new chemicals and for chemicals to be designated low priority).

Claim: ***The bill does not require particular protections for vulnerable communities and populations.*** (CEH)

Response: ***False.*** The bill specifically requires that "a safety assessment shall take into consideration...the vulnerability of exposed subpopulations." In the scientific and regulatory community, exposed subpopulations with heightened vulnerability are generally presumed to include children, infants, fetuses, pregnant women, workers, the elderly, and others who experience elevated chemical susceptibility or exposure compared to the general population.

Staff is continuing to work to ensure that vulnerable communities and populations get the protection they need and deserve under a reformed TSCA.

Claim: ***The bill fails to prioritize chemicals that are in umbilical cord blood and persist in our bodies (PBTs, or persistent, bioaccumulative, and toxic chemicals).*** (EWG)

Response: ***Partially True.*** While the bill does not explicitly prioritize chemicals in umbilical cord blood or PBTs, given the broad acknowledgment of the high concern associated with these chemicals, there is every reason to expect they would be among the first placed by EPA onto the bill's high priority list. In fact, the bill explicitly requires that chemicals EPA has already prioritized be included in the initial list of chemicals for prioritization; these roughly 100 chemicals include many PBTs. The bill also authorizes EPA to require testing of chemicals for their bioaccumulation, persistence, and presence in human blood, fluids, or tissue.

Claim: ***This bill does not protect communities located near chemical plants.*** (EWG)

Response: ***Partially True.*** While addressing "hot spots" is very important and such provisions were part of the Safe Chemicals Act, they were not included in the CSIA compromise. However, the bill does require EPA to consider populations with higher than average exposures when assessing the safety of chemicals, which likely would encompass communities located near chemical plants or other emitting facilities.

It is important to note that the bill does not preclude consideration of hotspots. If EPA determines that there are disproportionately high exposures to a chemical for people residing in hotspots, EPA is to consider those exposures in conducting an assessment.

Claim: ***All state actions would screech to a halt as soon as EPA put a chemical on any kind of priority list.*** (EWG)

Response: ***False.*** Existing state prohibitions or restrictions on a chemical would remain in place until EPA made a final safety determination on that chemical. Only new state prohibitions or restrictions on a chemical would be precluded by an EPA prioritization decision. State requirements (whether new or existing) that do not directly prohibit or restrict a chemical would never be pre-empted: including requiring reporting on a chemical's use or presence in products, warning labels such as under California's Proposition 65, limits on exposure levels or releases, monitoring, etc. States could apply for waivers to continue to impose existing or impose new requirements.

It is important to note that under the bill there is never a full preemption of an entire state law. Preemption is done on a chemical-by-chemical basis consistent with the scope of the review and decision, and even where a chemical goes through a safety determination some types of requirements imposed on that chemical under state laws are not preempted.

It is also important to note that current TSCA would also pre-empt state actions once EPA took action on a chemical; few realize this since it has rarely been triggered, because EPA has rarely been able to act on chemicals under the current law.

Claim: ***Companies would not be held responsible for most chemical testing expenses, forcing taxpayers to fork over most of the money.*** (EWG)

Response: ***False.*** Under CSIA, all costs of testing required by EPA are to be borne by companies. TSCA's current provision that authorizes EPA to assess fees on industry to cover its costs for chemical reviews (Section 26(b)) is retained in CSIA.

Claim: ***When submitting health and safety testing data, companies would be allowed to keep secret the names and other identifying features of their chemicals.*** (EWG)

Response: ***Partially True.*** The handling of Confidential Business Information (CBI) is quite complex in CSIA, but here are the key points:

- Health and safety data for existing chemicals already on the market and chemicals for which testing is required cannot be kept confidential. The bill is silent as to whether health and safety data for new chemicals not yet being manufactured is eligible for CBI.
- For chemical identity to be claimed as CBI, substantiation must be provided and a time period must be specified and found to be reasonable by EPA. EPA can require redocumentation or resubstantiation of any such claim at any time.
- For information that is submitted prior to the enactment of the bill, chemical identity is presumed to be protected if it was claimed as CBI. All claims submitted after the enactment of the bill, however, must be substantiated, reviewed and approved within a given time limit.

Claim: ***The new bill gives industry greater protections for CBI (Confidential Business Information) – trade secrets [than current law].*** (EWG)

Response: ***False.*** On balance, the requirements to make and maintain CBI claims are more restrictive, and greater access to CBI information is provided. A few examples:

- CBI claims must be substantiated at the time they are made. Currently most claims can be asserted without justification.
- EPA must review all or at least a representative subset of CBI claims. Under current law, EPA is not required to review any CBI claims.
- CBI claims for chemical identity are time-limited for a period EPA must determine is reasonable. There is no such requirement under current TSCA. In addition, under CSIA, EPA can require resubstantiation of CBI claims for chemical identity at any time.
- Resubstantiation of CBI can be required for any claim once a chemical is designated high priority.
- State government representatives and health professionals and officials would have access to CBI. Current TSCA forbids such access.

Claim: ***The bill makes it harder for medical personnel to learn the identity of secret chemicals when treating patients potentially exposed to those substances.*** (EWG)

Response: ***False***. The bill makes it *easier* for medical personnel as well as health professionals to obtain this and other confidential business information. For the first time, these individuals would be able to learn the identity of chemicals claimed confidential, subject to confidentiality agreements. This is the same approach taken under OSHA's Hazard Communication Standard for worker access to CBI, and under the Emergency Planning and Community Right to Know Act (EPCRA).

Claim: ***The new bill would give EPA the option of letting companies market new chemicals before it has enough information to decide if they are safe.*** (EWG)

Response: ***Mostly False***. The bill is a major improvement over current TSCA, which allows new chemicals to enter the market unless EPA finds significant evidence of potential harm. Under CSIA, for the first time, EPA would have to make an affirmative finding that a new chemicals "is likely to meet the safety standard" in order for manufacturing to commence. After market entry, such chemicals would become existing chemicals and be subject to the bill's prioritization process and, where applicable, its safety assessment/determination process, which isn't the case now.

Claim: ***There are no provisions for hot spots research, the creation of a children's environmental health research program or green chemistry program, or increased international cooperation to regulate toxics.*** (EWG)

Response: ***True.*** To reach a compromise the negotiators agreed to limit the scope of the bill to fixing the core provisions of the current law. Hence, these provisions, which were in the Safe Chemicals Act but would have extended the scope of current TSCA, were not included. While these provisions addressed important concerns, their omission does not represent a weakening of the status quo.

It is important to note that there is nothing in the legislation that would preclude EPA from addressing these issues.

Claim: ***There are no penalties on companies endangering human health or the environment.*** (Op-Ed News)

Response: ***False.*** No penalty provisions were deleted from current law. There are several sections of the bill, carried over from current TSCA, that address issues of compliance, enforcement and penalties:

- Section 16: penalties for violations of the law
- Section 17: EPA enforcement authority
- Section 20: provision for civil suits by any person or non-governmental party

Claim: ***Safety determinations are "final agency actions" and therefore subject to judicial review.*** (EWG)

Response: ***True.*** Judicial review allows any party, including health or environmental NGOs, state agencies, or industry, to take EPA to court if they believe that a safety determination is flawed. Because these decisions are of paramount importance, they should be subject to judicial challenge.

Claim: ***Chemical manufacturers would likely be immune from legal actions brought by injured individuals in civil proceedings, once EPA determined that a chemical did not present an unreasonable risk.*** (EWG)

Response: ***False, but needs clarification.*** The bill does not contain any language that would or is intended to pre-empt tort actions under state liability law.

To address this potential concern, staff are working on an explicit savings clause that makes clear the intent is not to pre-empt any party's right to bring tort actions under the authority of state law. The proposed savings clause is:

*Savings Clause.—Nothing in this subsection shall be construed to preempt any cause of action under State law seeking damages or equitable relief alleging personal injury, death, or property damage arising from exposure to a chemical substance or mixture.*

**Additional Information**

***Corrosion Proof Fittings v. EPA (1991) (link)***

The failure of TSCA in 1991 to allow EPA to ban most uses of asbestos was not EPA's inability to prove that asbestos is hazardous to human health. Rather, the U.S. Court of Appeals, Fifth Circuit, overturned EPA's rulemaking to ban asbestos because EPA failed to meet its burden under TSCA of demonstrating through rigorous cost-benefit analysis that it had analyzed all of the potential means of regulating each use of asbestos and selected the "least burdensome" regulatory option in each case. CSIA has eliminated this requirement, taking a huge step forward in allowing EPA to regulate/ban hazardous chemicals.

The court's conclusion can be found here:

*In summary, of most concern to us is that the EPA has failed to implement the dictates of TSCA and the prior decisions of this and other courts that, before it impose a ban on a product,* ***it first evaluate and then reject the less burdensome alternatives laid out for it by Congress****. While the EPA spent much time and care crafting its asbestos regulation, its explicit failure to consider the alternatives required of it by Congress deprived its final rule of the reasonable basis it needed to survive judicial scrutiny.*