

# Kid-Safe Chemicals Act of 2008

S. 3040. Senators Lautenberg, Boxer, Clinton, Kerry, Menendez, and Whitehouse.

H.R. 6100. Representatives Solis, Waxman, Sestak, Hinchey, Grijalva, Schakowsky, Capps, Serrano, McGovern, Lee, Rothman, and George Miller.

Kid-Safe is the first proposed reform of the Toxic Substance Control Act, 15 USC 2601 et seq. (1976), which regulates industrial chemicals. TSCA was passed more than 30 years ago and has never been updated. Kid-Safe would overhaul TSCA and put the burden on the chemical manufacturing and processing industry to prove that chemical substances are safe for infants, children and workers before they enter the marketplace, grant EPA unequivocal authority to request studies necessary to prove safety, and provide deadlines for restricting or banning manufacture and use for unsafe chemical substances and noncompliance.



	KID-SAFE CHEMICALS ACT	TOXIC SUBSTANCES CONTROL ACT
	<b>Chemicals must be safe for the fetus, infant and other vulnerable populations.</b>	<b>62,000 chemicals in commerce when TSCA enacted are grandfathered in, or presumed harmless. New chemicals are innocent until proven guilty.</b>
<b>Safety Standard</b>	Reasonable certainty of no harm from aggregate exposure applied to the fetus, infant, child, or other vulnerable populations: a 1 in 1 million cancer risk to the monthst vulnerable person in the population, and, for noncancer effects, an additional 10-fold safety factor must be added to protect children and other vulnerable populations. §§501, 504 and 507	EPA allowed to regulate chemical manufacture and use only if EPA can affirmatively show that it “will present an unreasonable risk of injury to health or the environment”, and then, only if it is the least burdensome and costly option. EPA has only 45 days to make this claim. §§5 and 6
<b>Priority Chemicals</b>	Establishes priority list of 300 chemical substances for compliance with safety standard within 18 months, with annual additions of 200 chemicals. Priority based on human exposure, use, persistence, bioaccumulation, toxicity, and emissions. Biomonitoring is a key priority-setting mechanism. Must meet the safety standard in 3 years, with a 2-year extension. If EPA does not act within 5 years, the chemical is banned. All chemicals must meet the safety standard in 15 years and are reassessed every 15 years. Chemicals found in human cord blood are presumed to violate the safety standard. §§503 and 505	Committee of government agency members established to provide EPA with a list of no more than 50 chemical substances that EPA may test pursuant to a rulemaking. This list is to be updated every 6 months as necessary. EPA not required to take action after publishing the semi-annual list and there is no indication that EPA has ever tested or taken action on listed chemicals. §4
<b>Data and Testing</b>	For the first time, manufacturers to provide EPA all reasonably available data on a chemical’s toxicity, production, use and exposure, and to update data at least every 3 years. Within 180 days EPA to establish minimum data requirements that include: presence in infants and children, drinking water and food; biological and environmental fate and transport; acute, subchronic and chronic human health effects; additive and synergistic effects; ecotoxicity; uses; releases; exposures. EPA has authority to request data needed to make the safety finding. EPA to make random annual data integrity audits. EPA must post this information on a publicly accessible database. §§502, 503, 504, 505, 506, and 512	No data required for 62,000 chemicals grandfathered in at passage. No minimum data set required for new chemicals and significant new uses, although manufacturers required for 90 days to submit data they believe is relevant and will show that the chemical will not present an unreasonable risk to health or the environment, any known adverse effects. EPA has authority to request additional data only for substances EPA determines within 45 days “may produce an unreasonable risk of harm to health or the environment”, as long as the testing is not too costly and the chemical is not subject to one of TSCA’s statutory exemptions or the many exemptions that EPA has issued. §§4, 5 and 8

<b>Biomonitoring</b>	Human biomonitoring required for chemicals to which people exposed, for which there is cause for concern, or that are HPVs, within 2 years. Priority chemicals found in human cord blood are presumed to violate the safety standard. CDC is required to submit biomonitoring data within 2 years. Chemical manufacturer must make available a practicable biomonitoring method. §§503, 504, 505, and 506	None.
<b>New Chemicals</b>	Must meet safety standard before they can be manufactured or distributed in commerce. §507	Does not require health and safety studies for new chemicals. 80% of all new chemicals approved within 3 wks, with or without health and safety testing. §5.
<b>Existing Chemicals</b>	CEO certifies that existing chemicals meet safety standard or that there is not sufficient data to make that determination, and submits all available information to EPA. §502	When TSCA passed, 62,000 chemicals were grandfathered in and presumed safe without any health and safety data. EPA has reviewed only 200 of 62,000 “old” chemicals, just 0.3%. §8
<b>Burden of Proof</b>	Kid-Safe places the burden squarely on the chemical industry to prove safety of its chemicals for the fetus, infant, children and other vulnerable populations. §§502 and 504	EPA must prove unreasonable risk to health and the environment and that regulation would not be too burdensome or too costly to the manufacturer or processor.
<b>Authority to Ban or Restrict</b>	EPA has clear authority to ban or restrict chemicals and individual chemical uses. §507	EPA has almost no authority to ban chemicals. In more than 30 years, EPA has only banned or regulated 5 chemicals under TSCA and was unable to ban asbestos, a known human carcinogen.
<b>Bans</b>	None mandated by passage.	Banned some uses of PCBs. §6
<b>User Fee</b>	EPA to establish a user fee to pay for biomonitoring. §506	EPA can reimburse companies for all testing costs. Fees paid when PMN and SNUR submitted, unless covered by an EPA exemption. §§4 and 26
<b>Exemptions</b>	EPA can issue a 5-year use exemption for a chemical: (1) if aggregate uses are below the safety standard, without public notice or comment required, and can renew repeatedly; (2) when the President declares it is a national security emergency or would result in significant national economic disruption, and no feasible alternative exists, after notice and public comment, with 1 extension. §507	TSCA contains numerous exemptions from all of its requirements, including: chemicals covered by the Act; reporting, testing, and data requirements; use reporting; CBI; exemptions to bans, i.e. PCBs; regulatory exemptions, etc. §§4, 5 and 6
<b>Use Reporting Required</b>	All reasonably available information from manufacturer.	Manufacturers required to report known uses, which are CBI. §§8 and 14
<b>Right to Know Guaranteed</b>	Full right to know guaranteed for all health and safety data; Confidential Business Information (CBI) protections maintained, but no longer extend to health and safety data. §§505, 512 and 513	Manufacturers can claim CBI for virtually all data, including chemical name and identity. Prohibits sharing homeland security information with local and state governments. Companies trusted to report information on immediate threats to human health and substantiated allegations of adverse health effects. §14
<b>Green Chemistry</b>	Encouraged through expedited review process. EPA to establish 4 research centers to provide technical training and assistance, conduct alternatives analysis, and provide green chemistry grants. §509	None.
<b>Citizen's Suits</b>	Yes. §514	Yes. §20
<b>State Preemption</b>	No. State and local rights explicitly protected. §514	Yes. §28
<b>Animal Testing Alternatives</b>	Required where practicable. Authorizes \$5M in appropriations. §508	None.