

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Jay R. Kaufman

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act for a competitive economy through safer alternatives to toxic chemicals.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT FOR A COMPETITIVE ECONOMY THROUGH SAFER ALTERNATIVES TO TOXIC CHEMICALS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 *Whereas*, The deferred operation of this act would tend to defeat its purpose, which is forthwith
2 to establish safer alternatives to toxic chemicals, therefore it is hereby declared to be an
3 emergency law, necessary for the immediate preservation of the public health and safety

4 *Whereas*, Article 97 of the Constitution of Massachusetts provides that the people shall have the right to
5 clean air and water; and

6 *Whereas*, scientific evidence increasingly links many chronic diseases with repeated and increased
7 exposure to toxic substances. These diseases and disorders include: asthma, autism, birth defects,
8 cancers, developmental disabilities, diabetes, endometriosis, infertility, Parkinson's disease, and others;
9 and

10 *Whereas* the General Court finds that:

11 With regard to many other toxic substances, the current regulatory system has failed to
12 protect health and environment due to fundamental flaws, namely that it places high burdens on

13 government to act, primarily after the damage is done rather than by prevention through seeking
14 the safest alternatives to toxics as they become available;

15 That the current regulatory system for toxic chemicals has particularly failed to protect
16 vulnerable populations including the developing fetus and child; people who are vulnerable due to
17 health conditions or genetic predispositions; and low-income communities or disadvantaged workers
18 who are overburdened with greater exposure to these toxic substances;

19 That Massachusetts is already a leader on environmental health policy with regard to
20 toxics as a result of the Toxics Use Reduction Act (TURA), which shows that there are many
21 benefits to businesses and the economy from implementing safer alternatives for toxic chemicals;
22 however that such act has failed to address the broader need to substantially reduce the use of
23 harmful chemicals in products used in workplaces and homes even though safer alternatives are
24 often available;

25 That the European Union and other countries have already adopted more restrictive policies
26 regarding the use of toxic chemicals and more health protective requirements for products, and over
27 37% of Massachusetts trade is with the European Union's Member States, and;

28 That there are safer alternatives available for many of the toxic substances in use today that will
29 allow businesses to be more competitive by reducing costs associated with health care costs, worker
30 illnesses and turnover, materials handling and tracking, and by opening local, national and international
31 markets to their products, and;

32 That investing in Massachusetts businesses to assist them in developing and instituting safer
33 alternatives will make Massachusetts a global leader in sustaining an innovative economy based on
34 research, development and production of new materials, products and processes that strengthen our
35 economy while protecting our health and environment;

36 *Therefore, it is the policy of the Commonwealth to ensure the substitution in the use,*
37 *manufacture, emission and distribution of each of the priority toxic substances, and in consumer*
38 *products containing the substances, with the safest feasible alternatives.*

39 *Be it enacted by the Senate and House of Representatives in General Court assembled, and by the*
40 *authority of the same, as follows:*

41 **SECTION 1.** To provide for certain unanticipated obligations of the commonwealth, to provide for an
42 alteration of purpose for current appropriations and to meet certain requirements of law, the sum set
43 forth in this section is hereby appropriated from the General Fund unless specifically designated
44 otherwise in this act for the several purposes and subject to the conditions specified in this act and
45 subject to the laws regulating the disbursement of public funds for the fiscal year ending 2010. Such
46 sum shall be in addition to any amounts previously appropriated and made available for the purposes of
47 said item.

48 **SECTION 2.**

49 2020-0200 The secretary of energy and environmental affairs shall expend for the purposes of carrying
50 out this act, and amount not to exceed \$4,200,000 from funds raised through the Safer Alternatives in
51 products Fee ; provided that funds shall be expended for the programs and duties of the office of
52 technical assistance and the department of environmental protection pertaining to this act, including
53 business assistance and development, provided further that the secretary may contract with the
54 executive office of housing and economic development in order to provide retraining benefits; and
55 provided further that the department of environmental protection shall annually file a report with the
56 house and senate committees on ways and means as well as with the joint committee on environment,
57 natural resources and agriculture detailing expenditures under this item in the preceding fiscal
58 year.....\$4,200,000.

59 Annually, the secretary of energy and environmental affairs shall expend from funds raised through the
60 Safer Alternatives in Products Fee, an amount not to exceed \$4,200,000; provided, that

61

- 62 • provided further, that the next 26 per cent of the revenue collected, but not more than \$1,560,000
63 per year, shall be allocated by the Administrative Council for activities considered appropriate to
64 carry out chemical action plans, grants for business assistance and worker retraining;
- 65 • provided further, that 25 per cent of revenue, but not more than \$1,500,000 per year, shall be
66 expended by the Office of Technical Assistance for activities related to safer alternatives to toxic
67 chemicals;
- 68 • provided further, that the final 19 per cent of revenue, but not more than \$1,140,000 per year,
69 shall be expended by the Department of Environmental Protection for activities related to safer
70 alternatives to toxic chemicals;

71 and provided further, that the department of environmental protection shall annually file a report with the
72 house and senate committees on ways and means detailing the expenditures under this item in the
73 preceding fiscal year.

74 7100-0301 The state treasurer shall disburse 30 per cent, but not more than \$1,800,000, from funds
75 collected through the Safer Alternatives in Products Fee, for the Safer Alternatives activities of the Toxics
76 Use Reduction Institute at the University of Massachusetts at Lowell, a portion of which may be
77 subcontracted to the University of Massachusetts at Worcester and for the University of Massachusetts
78 at Amherst for assistance with assessment reports and toxics research; provided further that the
79 institute shall annually file a report detailing expenditures under this item with the chairs of the house
80 and senate committees on ways and means as well as with the joint committee on environment, natural
81 resources and agriculture.....\$1,800,000

82 Annually, the state treasurer shall disburse from funds raised through the Safer Alternatives in Products
83 Fee, 30 per cent of the total, but not to exceed \$1,800,000, for the Safer Alternatives activities of the
84 Toxics Use Reduction Institute at the University of Massachusetts at Lowell, a portion of which may be
85 subcontracted to the University of Massachusetts at Worcester and for the University of Massachusetts
86 at Amherst for assistance with assessment reports and toxics research.

87 **SECTION 3.** Section 2 of chapter 21I of the General Laws, as appearing in the 2006 Official Edition, is
88 hereby amended by inserting after the definition of "Agency" the following definition:

89
90 "Alternative", an activity, technology, material or method of equivalent function which can be
91 substituted for the use of a particular chemical.

92
93 **SECTION 4.** Said section 2 of said chapter 21I, as so appearing, is hereby further amended by
94 inserting after the definition of "Manufacture" the following definitions:--

95
96 "Manufacturer", for the purposes of section 24 through 35 of this chapter, manufacturer shall
97 mean any person, firm, association, partnership, corporation, governmental entity, organization,
98 combination or joint venture which is last in the production or assembly process of a new
99 product, or in the case of an imported product, the importer or domestic distributor of the
100 products; provided that, if a company from who an importer or domestic distributor purchases
101 the merchandise has a presence or assets in the United States, that company shall be considered
102 the manufacturer and the distributor as defined in chapter 93B shall not be considered the
103 manufacturer.

104 "Proven technologies" means technologies in use by some users within similar firms in a user
105 sector within or outside of the Commonwealth.

106 “User of a priority toxic substance”, for sections 24 to 27 inclusive means a person or legal entity
107 that uses a priority toxic substance in manufacturing, products or services delivered, sold or
108 conducted within the Commonwealth

109
110 "Feasible" means capable of being accomplished within a reasonable period of time with proven
111 technologies.

112
113 “Distributor” means any person or legal entity which distributes products to retail establishments
114 on a wholesale basis, and also includes any legal entity which owns retail establishments and
115 distributes such products to more than five retail establishments of its own within the
116 Commonwealth. Distribution or sales include, but are not limited to, transactions conducted
117 through sales outlets, catalogs or the internet, a product under its own brand or sales of a product
118 by others under their own brand or label.

119 **SECTION 5.** Said section 2 of said chapter 21I, as so appearing, is hereby further amended by
120 inserting after the definition of ““POTW (publicly-owned treatment works) operators” the
121 following 2 definitions:-

122
123 “Priority toxic substance”, a chemical substance designated by the council from the list of
124 chemicals of high concern,

125
126 “Priority toxic substance use”, a use of a priority toxic substance designated as such by the
127 council pursuant to section 25.

128 **SECTION 6.** Said section 2 of said chapter 21I, as so appearing, is hereby further amended by
129 inserting after the definition of ““Resource conservation” the following 2 definitions:-

130
131 “Safer alternative”, an option, including a change in toxic substance, material, product, process,
132 function, system or other action, to replace a toxic substance currently in use and which would be
133 effective in reducing the overall potential for harm to human health or the environment.

134
135 “Safer alternatives assessment report”, the alternatives assessment completed for each priority
136 toxic substance by the Institute.

137 **SECTION 7.** Said section 2 of said chapter 21I, as so appearing, is hereby further amended by
138 inserting after the definition of “State agency” the following definition:-

139
140 “Substitution”, the replacement or reduction of a hazardous substances by selecting a less
141 hazardous or nonhazardous substance or by changing a production process, product function or
142 design.

143 **SECTION 8.** Said section 2 of said chapter 21I, as so appearing, is hereby further amended by
144 striking out the definition of “Toxic or hazardous substance” and inserting in place thereof the
145 following definition:-

146
147 Toxic or hazardous substance”, a substance in any form which is identified on the toxic or

148 hazardous substance list established pursuant to section 9; provided, however, that a toxic or
149 hazardous substance shall not be subject to sections 1 to 23, inclusive, when it is: (1) present in
150 an article; (2) used as a structural component of a facility; (3) present in a product used for
151 routine janitorial or facility grounds maintenance; (4) present in food, drugs, cosmetics or other
152 personal items used by employees or other persons at a facility; (5) present in a product used for
153 the purpose of maintaining motor vehicles operated by a facility; (6) present in process water or
154 noncontact cooling water as drawn from the environment or from municipal sources, or present
155 in air used either as compressed air or as part of combustion; (7) present in a pesticide or
156 herbicide when used in agricultural applications (8) present in crude, lubricating or fuel oils or
157 other petroleum materials being held for direct wholesale or retail sale; or (9) present in fuels
158 used in combustion to produce electricity, steam or heat, except when production of electricity,
159 steam or heat is the primary business of a facility; and provided further, that a toxic or hazardous
160 substance shall not be subject to sections 24 to 28, inclusive, when it is: (1) present in fuel oils or
161 petroleum materials being held for direct wholesale or retail sale; (2) present in fuels used in
162 combustion to produce electricity, steam or heat; or (3) present as a naturally-occurring
163 substance in fuels and in emissions or byproducts as a result of the combustion of fuels 4)
164 present or used in the manufacturing of a product manufactured in Massachusetts by a contractor
165 or subcontractor pursuant to a contract with the Department of Defense or the Department of
166 Homeland Security.

167 **SECTION 9.** Section 3 of said chapter 21I, as so appearing, is hereby amended by inserting
168 after the word “reduction”, in line 61, the following words:- , substitution of safer alternatives.

169 **SECTION 10.** Said section 3 of said chapter 21I, as so appearing, is hereby further amended by
170 striking out paragraph (J) and inserting in place thereof the following paragraph:-

171

172 (J) The office of technical assistance shall establish technical assistance grants to organizations
173 of consumers or workers focused on the impact of substitutions of safer alternatives in specific
174 sections. The grants may include assistance in securing information on technologies and their
175 impact on workers, consumers and the environment; hiring independent technical support
176 regarding technologies, processes and work organization; and paying for training programs to
177 assist affected groups in analyzing the changes.

178 **SECTION 11.** Section 4 said chapter 21I, as so appearing, is hereby amended by adding the
179 following paragraph f, in line 57, by inserting after the word “organization.” the following
180 words:--the advisory committee may provide comment to the administrative council on all
181 aspects of the safer alternatives program, including comments relative to chemical action plans,
182 safer alternatives assessment reports, and the composition of the chemical list created in
183 paragraph (a) of section 24. All such official comment shall be considered a matter of public
184 record. The advisory committee may recommend substances to be selected by the council for
185 assessment. If the administrative council rejects this recommendation, the council shall provide a
186 written statement to the advisory committee and to the house and senate committees on ways and
187 means and to the house and senate chairs of the joint committee on environment, natural
188 resources and agriculture, communicating the reasons for the rejection thereby.

189 **SECTION 12.** Said chapter 21I is hereby further amended by inserting after section 6 the
190 following section:-

191
192 Section 6A. (a) In addition to any other requirements of this chapter, the institute shall seek to
193 reduce the presence of toxic or hazard substances in products manufactured for use and sale in
194 the commonwealth by promoting safer alternatives to such substances. The institute may
195 develop recognition programs to promote the priority toxic substance reduction achievements of
196 industry and communities. The institute may establish fees for its safer alternatives programs.
197 When feasible, the institute shall coordinate the programs and responsibilities relative to the
198 substitution of safer alternatives for priority toxic substances with those programs and
199 responsibilities described in this chapter.

200
201 (b) Through such programs, the institute may:

- 202
203 (1) provide general information about toxic or hazardous substances and actively publicize the
204 advantages of and developments in safer alternatives and the requirements of this chapter, which
205 shall include, but not be limited to, providing information about public health, environmental and
206 economic issues associated with toxics use and toxics use reduction;
- 207 (2) establish courses, seminars, conferences and other events and provide reports, updates, guides
208 and other publications and other means of providing technical information for consumers and, as
209 appropriate, work in coordination with the office;
- 210 (3) develop and provide curriculum and training for higher education students and faculty on
211 priority toxic substances and potential safer alternatives;
- 212 (4) sponsor or engage in research to identify potential priority toxic substances and potential
213 safer alternatives to such substances;
- 214 (5) sponsor research or pilot projects to develop and demonstrate innovative technologies for
215 implementing safer alternatives to priority toxic substances;
- 216 (6) subject to appropriation, develop in consultation with the department and office, a safer
217 alternatives curriculum and training program to supplement the toxics use reduction planner
218 training program; and
- 219 (7) subject to appropriation, provide safer alternatives implementation training and assistance to
220 citizens, community groups, nonprofit organizations and institutions, workers, labor
221 representatives, businesses, product supply chains and state and local government boards and
222 officials; provided, however, that such training and assistance shall provide such individuals and
223 groups with an understanding of the public health and environmental impacts of the presence of
224 toxic or hazardous substances, the methods and strategies for substituting safer alternatives for
225 priority toxic substances and the requirements of this chapter.

226 (c) No later than July 1, 2010, the Institute shall publish a chemicals categorization list for
227 chemicals commonly used in Massachusetts industry or in products sold in Massachusetts. The
228 institute will rely on the Science Advisory Board to categorize chemicals on the chemicals
229 categorization list into one of four categories: chemicals of high concern, chemicals of concern,
230 chemicals of unknown concern, and chemicals of low concern. In preparing this categorization
231 the Science Advisory Board will rely on published government lists of chemical categorizations
232 such as, but not limited to, the Canadian Domestic Substances List Categorization, the European
233 Commission's list of substances of very high concern, Washington State's list of persistent,

234 bioaccumulative and toxic chemicals, the International Agency for Research on Cancer’s list of
235 carcinogens. However, the chemicals of high concern category must include those chemicals
236 recognized as carcinogens, mutagens and reproductive toxins; chemicals recognized as
237 persistent, bioaccumulative and toxic chemicals; chemicals recognized as very persistent and
238 very bioaccumulative chemicals; chemicals recognized as endocrine disruptors; and other
239 chemicals of equivalent concern. The institute may create subcategories within these four
240 categories. These categories may be adjusted to take account of current chemical lists and
241 additional information, including information on emerging materials. At periodic points, but at
242 least every 4 years, and within 4 years after publication of the list, the institute and the Science
243 Advisory Board shall refine the list to incorporate new scientific information and data, and
244 publish a refined version of the list.

245
246 **SECTION 13.** Section 7 of said chapter 21I, as appearing in the 2006 Official Edition, is hereby amended
247 by adding the following 2 paragraphs:-

248

249 (K). The Office of Technical Assistance shall oversee an “Assist Business to Compete Fund” (the ABC
250 Fund) facilitating transitions to safer alternatives to toxic chemicals and business development
251 opportunities in manufacturing safer alternatives and products containing safer alternatives. In
252 developing the program, the Office shall determine where business assistance and financial investment
253 can be most effectively used to protect public health and strengthen the Commonwealth’s economy by
254 focusing on application and promotion of safer alternatives.

255

256 The office of technical assistance shall provide technical assistance to businesses for developing and
257 implementing safer alternatives consistent with sections 6 and 7 of this chapter and including

- 258 1. direct grants and loans to businesses for costs required to implement safer alternatives
- 259 2. technical support focused on individual companies or user sectors;
- 260 3. technical assistance in assessing safer alternatives and assistance with forming
261 consortiums to assess and develop safer alternatives
- 262 4. market development programs, to create demand for safer alternatives;
- 263 5. seminars and workshops to assist businesses in adopting safer substitutes; and
- 264 6. publications focused on particular user sectors.

265 The ABC Fund shall be developed with assistance and collaboration with the department of labor
266 and industries, department of economic development, the office of technical assistance of the
267 executive office of environmental affairs, department of labor and workforce development, and
268 the institute.

269

270 (L) The office shall work with the institute, in consultation with the implementing agencies to
271 establish an innovative business leaders program to encourage early substitution of high hazard
272 and priority toxic substances. The program shall assist users of chemicals of high concern and
273 priority toxic substances to complete substitution plans. The program may include priority

274 targeted financial and technical assistance and support for research, information gathering and
275 implementation.

276 **SECTION 14.** Said chapter 21I is hereby amended by adding the following 5 sections:
277

278 Section 24. (a) Annually, the council shall identify, on the basis of available funds, available
279 institute resources, 2 to 5 priority toxic substances from the list of chemicals of high concern, and
280 direct the institute to prepare and publish a safer alternatives assessment report that evaluates the
281 availability of safer alternatives for each selected substance. In identifying priority toxic
282 substances, the council shall prioritize substances that adversely impact human health with
283 highest priority given to preventing adverse impacts on children, infants, developing fetuses, and
284 workers, and other vulnerable populations. In selecting priority toxic substances the council may
285 consider opportunities that strengthen the Commonwealth's economy.

286 The council, in consultation with the institute, shall establish a schedule for the development of
287 each safer alternatives assessment report.
288

289 (b) For each safer alternatives assessment report, the institute shall:
290

291 (1) identify the uses and functions of the priority toxic substance and select a subset of uses and
292 functions for further study based on uses in products and facilities and other relevant factors that
293 are consistent with the criteria set forth in Section 24 (a)

294 (2) identify whether alternatives are available for the selected uses and functions of the priority
295 substance;

296

297 (3) identify whether any of the existing uses of the substance are of a clearly unnecessary nature;
298

299

300 (4) research and study relevant factors to characterize feasible alternatives;

301

302 (5) provide a qualitative discussion of the economic viability, opportunities or costs associated
303 with adopting and implementing any safer alternatives; provided, however, that such discussion
304 may include a qualitative characterization of the economic impacts and benefits of substitution
305 the extent of human exposure to the priority toxic substance that could be eliminated through
306 substitution or other actions and potential public health benefits or reductions in health care
307 costs ;

308

309 (6) identify uses of substances that do not currently have a feasible safer alternative available and
310 make recommendations for promoting research and development of such alternatives; and

311

312 (7) use the chemicals categorization list and other lists, including government lists of substances
313 used in industry or in consumer products, in order to identify potential safer alternatives.

314

315 (c) The institute shall seek comments from the science advisory board, the advisory committee
316 and members of the public, including all regions of the commonwealth, in developing each safer
alternatives assessment report.

317
318 (d) The institute shall publish the results of the safer alternatives assessment report for each
319 substance assessed.
320
321 (e) Following publication of a safer alternatives assessment report for a selected priority toxic
322 substance, the institute shall review its findings with the advisory committee and the council on a
323 periodic basis, but not less than once every 5 years, and shall revise such report as necessary to
324 update it and to address new recommendations. Revised reports shall be made available to the
325 public for comment, and final revised reports shall be published.
326
327 (f) In the event that a substance to be assessed is a pesticide, the institute shall contract with
328 resources at the University of Massachusetts at Amherst, including the Cooperative Extension
329 Service, for assistance and guidance in assessing agricultural uses of such substance.
330
331 (g) In the event that a substance to be assessed is used for medical purposes, the institute shall
332 contract with resources at the University of Massachusetts at Worcester for assistance and
333 guidance in assessing medical uses of such substance.

334 (h) No later than 120 days following the designation by the Council of a priority toxic substance, any
335 person or legal entity that manufactures or distributes a product in the Commonwealth which the
336 manufacturer or distributor knows or has reason to suspect to contain a priority toxic substance shall
337 file a notice with the department identifying the product, the approximate number of units distributed
338 in the Commonwealth, an estimate of the amount or concentration of the priority toxic substance
339 contained in each unit, if known, purpose for including the priority toxic substance, the name and
340 address of the manufacturer, and the name, address, and phone number of a contact person. The
341 department shall prescribe a notification form for such notices to be filed, and a means of filing such
342 notices electronically. The department shall establish procedures to assure compliance and penalties for
343 noncompliance. In addition the department shall establish a de minimis threshold for priority toxic
344 substance content in a product below which this provision does not apply

345

346 (i) Distribution of information. Public disclosure of confidential business information submitted
347 to the department pursuant to this section shall be governed by the requirements of section 10 of
348 chapter 66 of the general laws.
349 (ii) Preemption. Any product containing a priority toxic substance for which federal law governs
350 notice in a manner that preempts state authority shall be exempt from the requirements of this
351 section.
352 (iii) With the approval of the department, a manufacturer, distributor or trade group may supply
353 the information required above for a product category rather than an individual product. The
354 submitter shall update and revise the information in the notification whenever there is significant
355 change in the information or when requested by the department.

356 Section 25. (a) Based upon each completed safer alternatives assessment report, the council shall
357 designate priority toxic substance uses if the safer alternatives assessment report concludes that
358 an assessed substance poses a significant hazard of harm to human health or the environment and

359 that safer alternatives can be feasibly substituted for specific uses of such substance.

360

361 (b) Not later than 1 year after the council identifies priority toxic substance uses, the department,
362 in consultation with the institute, office of technical assistance, and the advisory committee, shall
363 complete a chemical action plan for that substance, focusing on priority uses, including uses in
364 products. The goal of the chemical action plan shall be to coordinate state agency activities and
365 to require users of priority toxic substances to act as expeditiously as possible to ensure
366 substitution of the priority toxic substances with safer alternatives, while also where possible
367 seeking to strengthen Massachusetts business, and develop job opportunities. The chemical
368 action plan shall identify specific actions that users of priority toxic substances shall be required
369 to implement, on a schedule to be established in the plan, to: (i) substitute a safer alternative for
370 the priority toxic substance in specific uses when feasible; and (ii) reduce human exposure to and
371 environmental contamination from such substance.

372

373 Substitution of a safer alternative shall be required whenever the safer alternatives assessment
374 report determines that there are safer alternatives that are feasible for specific uses of a priority
375 toxic substance use. Efforts to reduce human exposure and environmental contamination shall be
376 required where the department determines that appropriate safer alternatives are not available.

377

378 (c) In preparing the chemical action plan, the department shall consider the potential impacts to
379 human health and the environment of the continued use of the priority toxic substance. The
380 chemical action plan shall include:

381

382 (1) schedules, timelines and deadlines for achieving substitution of the priority toxic substance
383 with safer alternatives, for specified priority uses;

384 (2) identification of department and other state agency regulations that shall be required to ensure
385 substitution of the priority toxic substance in products and used by toxics users, and to
386 implement other agency actions identified in the chemical action plan.

387 (3) in cases where safer alternatives are feasible, but require significant and prohibitive costs to
388 business, such as capital expenditure or training, the chemical action plan shall include a targeted
389 ABC Fund program. The chemical action plan shall set a timetable for completing substitutions
390 as expeditiously as possible, taking into consideration the financial needs of the users.

391

392 (4) identification of other state agency actions that should be implemented to reduce human
393 exposure to the priority toxic substance in a particular use and to reduce the potential for
394 environmental contamination from such substance; provided, however, that such actions may
395 include, but shall not be limited to:

396

397 (i) technical assistance to product manufacturers and users;

398 (ii) substitution planning requirements on users;

399 (iii) research and development into safer alternatives to the use of a priority toxic substance;

400 (iv) product labeling and other notification to users that a product contains a priority toxic
401 substance and advice on the proper handling and disposal to minimize human exposure to the
402 priority toxic substance;

403 (v) registering the use of a priority toxic substance with the department;
404 (vi) limitations on certain continued uses of the priority toxic substance to specific applications;
405 and
406 (vii) incorporation of reduction measures in toxic use reduction plans submitted to the
407 department pursuant to section 11; and

408
409 (d) After the department has developed a chemical action plan, it shall be presented to the
410 council for adoption; provided, however, that the council shall seek public comment on each plan
411 and, within 6 months, adopt a plan. Upon adoption of a chemical action plan by the council, all
412 state agencies shall take any required implementing actions as set forth in the chemical action
413 plan and this chapter.

414
415 (e) Based on a chemical action plan as adopted by the council, the department shall, promulgate
416 regulations to restrict the use of priority toxic substances for specified uses and within consumer
417 products. Such regulations shall establish a substitution deadline, substitution planning
418 requirements for specific of each priority toxic substance use, and specify acceptable
419 alternatives.

420
421 Section 26. In implementing the chemical action plan, the department shall:

422 (1) require toxics users and other persons to file with the department a certification of
423 compliance with any substitution or other requirement promulgated by the department, or

424
425 (2) authorize the filing with the department of an application to use an alternative substance that
426 has not been identified as an acceptable alternative, documenting with toxicity and exposure data
427 how the proposed alternative substance would ensure protection of health and the environment
428 and, in response to such request, the department shall determine whether such alternative is
429 acceptable, or

430
431 (3) authorize the filing with the department of an application for a waiver of a substitution
432 deadline, certifying that there is no safer alternative that is technically or economically feasible
433 for a particular use of the substance; provided, however, that such waiver application shall
434 include:

435 (i) identification of the specific use of the priority toxic substance for which a waiver is sought;
436 (ii) identification of all alternatives considered and their cost and feasibility considerations;
437 (iii) the basis for finding that there is no feasible safer alternative;
438 (iv) documentation of any efforts to be taken to minimize the use of the priority toxic substance
439 and of human and environmental exposures to such substance until safer alternatives are found
440 and implemented; and
441 (v) the steps the applicant shall take to identify safer alternatives in the following 3 years;

442 In granting such waivers, the department shall, in consultation with the department of public
443 health and the department of economic development, consider whether: (i) there is a need for the
444 use of the substance; (ii) there is no safer alternative feasibly available, (iii) the availability of
445 ABC Fund assistance to the applicant and (iv) the impact on the economic viability of

446 Massachusetts businesses. Waivers shall not be granted for more than 3 years.

447

448 (d) This section shall apply to a person who manufactures, sells, offers for sale or distributes
449 products containing a priority toxic substance in the commonwealth.

450

451 (e) Within the time of a substitution deadline established by the department, the department shall
452 require any regulated entity to certify that substitution of the substance has been completed.

453

454 Section 27. Certain functions provided for in this chapter may be transferred to or carried out in
455 cooperation with an interstate entity. The interstate entity may, among other functions: compile
456 and categorize chemical lists, produce alternatives assessment reports; develop model chemical
457 action plans and house product or chemical use registries. The department may promulgate
458 regulations to carry out this section.

459

460 Section 28. (a) Except as otherwise provided in subsection (b), violations of sections 24 to 26,
461 inclusive, may be punished by a fine of not more than \$25,000 per day for each day a violation
462 exits. In addition, the department may prohibit the sale or distribution of products when a
463 distributor or manufacturer has failed to comply with this chapter.

464

465 (b) End users of consumer products shall not be subject to enforcement action under subsection
466 (a).

467 **SECTION 15.** Notwithstanding any general or special law to the contrary, an employer
468 separating one or more individuals from employment as a result of this act shall notify the
469 Department at the time of separation. The local Workforce Investment Board shall work with the
470 Rapid Response Team set aside program within the Department of Workforce Development to
471 determine a separated individuals eligibility for benefits under the set aside program. The Rapid
472 Response Team shall establish criteria to determine eligibility for benefits under the set aside
473 program. Any individual deemed eligible for benefits under this act shall be entitled to receive re
474 training, subject to the approval of the Rapid Response Team, sufficient to qualify the individual
475 to re employment at a wage not less than the wage he or she was receiving at the time of
476 separation from employment. Any individual deemed eligible for re training benefits under this
477 act shall also be eligible to receive unemployment benefits during the entire period that he or she
478 remains enrolled in and in compliance with the requirements of, any such approved retraining
479 program.

480

481 **SECTION 16.** The TURA Administrative Council shall, in consultation with the Department of
482 Environmental Protection, develop a Safer Alternatives in Products Fee, separate from the Toxics Use Fee
483 structure for large quantity toxics users. This fee shall be placed on wholesale sellers or distributors of
484 products containing priority toxic substances to entities in Massachusetts, whether or not such wholesale
485 sellers or distributors are located within the Commonwealth. The fee shall initially be set at a level
486 sufficient to raise \$2.0 million in the year following enactment of this law, \$4.0 million in the second
487 year after the enactment of this law, \$6.0 million the third year and at least \$6.0 million in each
488 subsequent year thereafter. The fee shall be adjusted every three years to reflect changes in the

489 Consumer Price Index. 75% of the fee shall be collected from larger distributors and 25% from smaller
490 distributors, based on criteria the council shall establish. In addition the department shall establish a de
491 minimis threshold for products, services and toxic substances below which no fee shall be assessed.

492 **SECTION 17.** The report required to be submitted by the administrative council on toxics use
493 reduction to the clerks of the senate and house of representatives and the house and senate chairs
494 of the joint committee on environment, natural resources and agriculture pursuant to Paragraph
495 (H) of section 4 of chapter 21I of the General Laws shall be filed not later than January 1, 2011.

496 **SECTION 18.** The safer alternatives curriculum and training program required to be established
497 pursuant to clause (6) of subsection (b) of section 6A of chapter 21I of the General Laws shall be
498 established not later than July 1, 2009.

499 **SECTION 19.** Nothing in this act shall require actions which are preempted by federal law. Nothing in
500 this act shall require the adoption of occupational safety and health standards or the issuance of orders
501 on an occupational safety and health matter on which the federal Occupational Safety and Health
502 Administration has established a standard. Nothing in this chapter shall convey rights to discharge
503 priority toxic substances into the environment, to cause potential harm to individuals or the
504 environment or to create a nuisance. Nothing in this chapter shall limit the authority of local
505 governments to restrict or prohibit the use or discharge of toxic substances. Any product containing a
506 priority toxic substance for which federal law governs notice in a manner that affects state authority to
507 act with respect to that product shall be exempt from the requirements of this act to the extent
508 required to satisfy the limits imposed by the federal law with respect to state action regarding the
509 product.