

SENATE No. 442

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Tolman

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:
Steven A. Tolman	Second Suffolk and Middlesex
Susan C. Tucker	Second Essex and Middlesex
John A. Hart, Jr.	First Suffolk
Brian A. Joyce	Norfolk, Bristol and Plymouth
Scott P. Brown	Norfolk, Bristol and Middlesex
Joan M. Menard	First Bristol and Plymouth
Kevin G. Honan	17th Suffolk
Kenneth J. Donnelly	Fourth Middlesex
Stanley C. Rosenberg	Hampshire and Franklin
Marian Walsh	Suffolk and Norfolk
Martin J. Walsh	13th Suffolk
Elizabeth Poirier	14th Bristol
Martha M. Walz	8th Suffolk
Marc R. Pacheco	First Plymouth and Bristol
Cynthia Stone Creem	First Middlesex and Norfolk
Thomas M. McGee	Third Essex and Middlesex
Richard T. Moore	Worcester and Norfolk
Michael O. Moore	Second Worcester
Kay Khan	11th Middlesex

James B. Eldridge	Middlesex and Worcester
Kathi-Anne Reinstein	16th Suffolk
Susan C. Fargo	Third Middlesex
Steven A. Baddour	First Essex
Bruce E. Tarr	First Essex and Middlesex
Karen E. Spilka	Second Middlesex and Norfolk
Cleon H. Turner	1st Barnstable
Michael Brady	9th Plymouth
Robert L. Hedlund	Plymouth and Norfolk
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Harriette L. Chandler	First Worcester
Patricia D. Jehlen	Second Middlesex
James E. Timilty	Bristol and Norfolk
Robert A. O'Leary	Cape and Islands
Steven M. Walsh	11th Essex
Jennifer L. Flanagan	Worcester and Middlesex
Matthew C. Patrick	3rd Barnstable
Bill Bowles	2nd Bristol
Mark C. Montigny	Second Bristol and Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00558 OF 2007-2008.]

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 to
2 establish safer alternatives to toxic chemicals, therefore it is hereby declared to be an emergency law,
3 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, cancers,
8 developmental disabilities, diabetes, endometriosis, infertility, Parkinson's disease, and others; and
- 9 Whereas the General Court finds that:
- 10 With regard to many other toxic substances, the current regulatory system has failed to protect health and
11 environment due to fundamental flaws, namely that it places high burdens on government to act,
12 primarily after the damage is done rather than by prevention through seeking the safest alternatives to
13 toxics as they become available;
- 14 That the current regulatory system for toxic chemicals has particularly failed to protect vulnerable
15 populations including the developing fetus and child; people who are vulnerable due to health conditions
16 or genetic predispositions; and low-income communities or disadvantaged workers who are overburdened
17 with greater exposure to these toxic substances;
- 18 That Massachusetts is already a leader on environmental health policy with regard to toxics as a result of
19 the Toxics Use Reduction Act (TURA), which shows that there are many benefits to businesses and the
20 economy from implementing safer alternatives for toxic chemicals; however that such act has failed to

21 address the broader need to substantially reduce the use of harmful chemicals in products used in
22 workplaces and homes even though safer alternatives are often available;

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

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

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

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

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

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

45 SECTION 2.

46 2020-0200 The secretary of energy and environmental affairs shall expend for the purposes of carrying
47 out this act, and amount not to exceed \$4,200,000 from funds raised through the Safer Alternatives in
48 products Fee ; provided that funds shall be expended for the programs and duties of the office of technical
49 assistance and the department of environmental protection pertaining to this act, including business
50 assistance and development, provided further that the secretary may contract with the executive office of
51 housing and economic development in order to provide retraining benefits; and provided further that the
52 department of environmental protection shall annually file a report with the house and senate committees
53 on ways and means as well as with the joint committee on environment, natural resources and agriculture
54 detailing expenditures under this item in the preceding fiscal year.....\$4,200,000.

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

57 • provided further, that the next 26 per cent of the revenue collected, but not more than \$1,560,000
58 per year, shall be allocated by the Administrative Council for activities considered appropriate to carry
59 out chemical action plans, grants for business assistance and worker retraining;

60 • provided further, that 25 per cent of revenue, but not more than \$1,500,000 per year, shall be
61 expended by the Office of Technical Assistance for activities related to safer alternatives to toxic
62 chemicals;

63 • provided further, that the final 19 per cent of revenue, but not more than \$1,140,000 per year,
64 shall be expended by the Department of Environmental Protection for activities related to safer
65 alternatives to toxic chemicals;

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

69 7100-0301 The state treasurer shall disburse 30 per cent, but not more than \$1,800,000, from funds
70 collected through the Safer Alternatives in Products Fee, for the Safer Alternatives activities of the Toxics
71 Use Reduction Institute at the University of Massachusetts at Lowell, a portion of which may be
72 subcontracted to the University of Massachusetts at Worcester and for the University of Massachusetts at
73 Amherst for assistance with assessment reports and toxics research; provided further that the institute
74 shall annually file a report detailing expenditures under this item with the chairs of the house and senate
75 committees on ways and means as well as with the joint committee on environment, natural resources and
76 agriculture.....\$1,800,000

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

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

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

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

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

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

97 "User of a priority toxic substance", for sections 24 to 27 inclusive means a person or legal entity that
98 uses a priority toxic substance in manufacturing, products or services delivered, sold or conducted within
99 the Commonwealth

100 "Feasible" means capable of being accomplished within a reasonable period of time with proven
101 technologies.

102 "Distributor" means any person or legal entity which distributes products to retail establishments on a
103 wholesale basis, and also includes any legal entity which owns retail establishments and distributes such
104 products to more than five retail establishments of its own within the Commonwealth. Distribution or
105 sales include, but are not limited to, transactions conducted through sales outlets, catalogs or the internet,
106 a product under its own brand or sales of a product by others under their own brand or label.

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

109 "Priority toxic substance", a chemical substance designated by the council from the list of chemicals of
110 high concern,

111 "Priority toxic substance use", a use of a priority toxic substance designated as such by the council
112 pursuant to section 25.

113 SECTION 6. Said section 2 of said chapter 21I, as so appearing, is hereby further amended by inserting
114 after the definition of ""Resource conservation" the following 2 definitions:-

115 "Safer alternative", an option, including a change in toxic substance, material, product, process, function,
116 system or other action, to replace a toxic substance currently in use and which would be effective in
117 reducing the overall potential for harm to human health or the environment.

118 "Safer alternatives assessment report", the alternatives assessment completed for each priority toxic
119 substance by the Institute.

120 SECTION 7. Said section 2 of said chapter 21I, as so appearing, is hereby further amended by inserting
121 after the definition of "State agency" the following definition:-

122 "Substitution", the replacement or reduction of a hazardous substances by selecting a less hazardous or
123 nonhazardous substance or by changing a production process, product function or design.

124 SECTION 8. Said section 2 of said chapter 21I, as so appearing, is hereby further amended by striking
125 out the definition of "Toxic or hazardous substance" and inserting in place thereof the following
126 definition:-

127 "Toxic or hazardous substance", a substance in any form which is identified on the toxic or hazardous
128 substance list established pursuant to section 9; provided, however, that a toxic or hazardous substance
129 shall not be subject to sections 1 to 23, inclusive, when it is: (1) present in an article; (2) used as a
130 structural component of a facility; (3) present in a product used for routine janitorial or facility grounds
131 maintenance; (4) present in food, drugs, cosmetics or other personal items used by employees or other
132 persons at a facility; (5) present in a product used for the purpose of maintaining motor vehicles operated
133 by a facility; (6) present in process water or noncontact cooling water as drawn from the environment or
134 from municipal sources, or present in air used either as compressed air or as part of combustion; (7)
135 present in a pesticide or herbicide when used in agricultural applications (8) present in crude, lubricating
136 or fuel oils or other petroleum materials being held for direct wholesale or retail sale; or (9) present in
137 fuels used in combustion to produce electricity, steam or heat, except when production of electricity,
138 steam or heat is the primary business of a facility; and provided further, that a toxic or hazardous

139 substance shall not be subject to sections 24 to 28, inclusive, when it is: (1) present in fuel oils or
140 petroleum materials being held for direct wholesale or retail sale; (2) present in fuels used in combustion
141 to produce electricity, steam or heat; or (3) present as a naturally-occurring substance in fuels and in
142 emissions or byproducts as a result of the combustion of fuels 4) present or used in the manufacturing of a
143 product manufactured in Massachusetts by a contractor or subcontractor pursuant to a contract with the
144 Department of Defense or the Department of Homeland Security.

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

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

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

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

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

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

174 (b) Through such programs, the institute may:

175 (1) provide general information about toxic or hazardous substances and actively publicize the
176 advantages of and developments in safer alternatives and the requirements of this chapter, which shall
177 include, but not be limited to, providing information about public health, environmental and economic
178 issues associated with toxics use and toxics use reduction;

179 (2) establish courses, seminars, conferences and other events and provide reports, updates, guides and
180 other publications and other means of providing technical information for consumers and, as appropriate,
181 work in coordination with the office;

182 (3) develop and provide curriculum and training for higher education students and faculty on priority
183 toxic substances and potential safer alternatives;

184 (4) sponsor or engage in research to identify potential priority toxic substances and potential safer
185 alternatives to such substances;

186 (5) sponsor research or pilot projects to develop and demonstrate innovative technologies for
187 implementing safer alternatives to priority toxic substances;

188 (6) subject to appropriation, develop in consultation with the department and office, a safer alternatives
189 curriculum and training program to supplement the toxics use reduction planner training program; and

190 (7) subject to appropriation, provide safer alternatives implementation training and assistance to citizens,
191 community groups, nonprofit organizations and institutions, workers, labor representatives, businesses,
192 product supply chains and state and local government boards and officials; provided, however, that such
193 training and assistance shall provide such individuals and groups with an understanding of the public
194 health and environmental impacts of the presence of toxic or hazardous substances, the methods and
195 strategies for substituting safer alternatives for priority toxic substances and the requirements of this
196 chapter.

197 (c) No later than July 1, 2010, the Institute shall publish a chemicals categorization list for chemicals
198 commonly used in Massachusetts industry or in products sold in Massachusetts. The institute will rely on
199 the Science Advisory Board to categorize chemicals on the chemicals categorization list into one of four
200 categories: chemicals of high concern, chemicals of concern, chemicals of unknown concern, and
201 chemicals of low concern. In preparing this categorization the Science Advisory Board will rely on
202 published government lists of chemical categorizations such as, but not limited to, the Canadian Domestic
203 Substances List Categorization, the European Commission's list of substances of very high concern,
204 Washington State's list of persistent, bioaccumulative and toxic chemicals, the International Agency for
205 Research on Cancer's list of carcinogens. However, the chemicals of high concern category must include
206 those chemicals recognized as carcinogens, mutagens and reproductive toxins; chemicals recognized as
207 persistent, bioaccumulative and toxic chemicals; chemicals recognized as very persistent and very
208 bioaccumulative chemicals; chemicals recognized as endocrine disruptors; and other chemicals of
209 equivalent concern. The institute may create subcategories within these four categories. These categories
210 may be adjusted to take account of current chemical lists and additional information, including
211 information on emerging materials. At periodic points, but at least every 4 years, and within 4 years after
212 publication of the list, the institute and the Science Advisory Board shall refine the list to incorporate new
213 scientific information and data, and publish a refined version of the list.

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

216 (K). The Office of Technical Assistance shall oversee an "Assist Business to Compete Fund" (the ABC
217 Fund) facilitating transitions to safer alternatives to toxic chemicals and business development
218 opportunities in manufacturing safer alternatives and products containing safer alternatives. In
219 developing the program, the Office shall determine where business assistance and financial investment

220 can be most effectively used to protect public health and strengthen the Commonwealth's economy by
221 focusing on application and promotion of safer alternatives.

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

224 1. direct grants and loans to businesses for costs required to implement safer alternatives

225 2. technical support focused on individual companies or user sectors;

226 3. technical assistance in assessing safer alternatives and assistance with forming consortiums to
227 assess and develop safer alternatives

228 4. market development programs, to create demand for safer alternatives;

229 5. seminars and workshops to assist businesses in adopting safer substitutes; and

230 6. publications focused on particular user sectors.

231 The ABC Fund shall be developed with assistance and collaboration with the department of labor and
232 industries, department of economic development, the office of technical assistance of the executive office
233 of environmental affairs, department of labor and workforce development, and the institute.

234 (L) The office shall work with the institute, in consultation with the implementing agencies to establish
235 an innovative business leaders program to encourage early substitution of high hazard and priority toxic
236 substances. The program shall assist users of chemicals of high concern and priority toxic substances to
237 complete substitution plans. The program may include priority targeted financial and technical assistance
238 and support for research, information gathering and implementation.

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

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

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

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

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

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

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

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

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

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

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

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

269 (d) The institute shall publish the results of the safer alternatives assessment report for each substance
270 assessed.

271 (e) Following publication of a safer alternatives assessment report for a selected priority toxic substance,
272 the institute shall review its findings with the advisory committee and the council on a periodic basis, but
273 not less than once every 5 years, and shall revise such report as necessary to update it and to address new
274 recommendations. Revised reports shall be made available to the public for comment, and final revised
275 reports shall be published.

276 (f) In the event that a substance to be assessed is a pesticide, the institute shall contract with resources at
277 the University of Massachusetts at Amherst, including the Cooperative Extension Service, for assistance
278 and guidance in assessing agricultural uses of such substance.

279 (g) In the event that a substance to be assessed is used for medical purposes, the institute shall contract
280 with resources at the University of Massachusetts at Worcester for assistance and guidance in assessing
281 medical uses of such substance.

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

293 (i) Distribution of information. Public disclosure of confidential business information submitted to the
294 department pursuant to this section shall be governed by the requirements of section 10 of chapter 66 of
295 the general laws.

296 (ii) Preemption. Any product containing a priority toxic substance for which federal law governs notice in
297 a manner that preempts state authority shall be exempt from the requirements of this section.

298 (iii) With the approval of the department, a manufacturer, distributor or trade group may supply the
299 information required above for a product category rather than an individual product. The submitter shall
300 update and revise the information in the notification whenever there is significant change in the
301 information or when requested by the department.

302 Section 25. (a) Based upon each completed safer alternatives assessment report, the council shall
303 designate priority toxic substance uses if the safer alternatives assessment report concludes that an
304 assessed substance poses a significant hazard of harm to human health or the environment and that safer
305 alternatives can be feasibly substituted for specific uses of such substance.

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

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

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

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

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

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

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

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

336 (ii) substitution planning requirements on users;

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

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

340 (v) registering the use of a priority toxic substance with the department;

341 (vi) limitations on certain continued uses of the priority toxic substance to specific applications; and

342 (vii) incorporation of reduction measures in toxic use reduction plans submitted to the department
343 pursuant to section 11; and

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

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

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

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

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

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

362 (i) identification of the specific use of the priority toxic substance for which a waiver is sought;

363 (ii) identification of all alternatives considered and their cost and feasibility considerations;

364 (iii) the basis for finding that there is no feasible safer alternative;

365 (iv) documentation of any efforts to be taken to minimize the use of the priority toxic substance and of
366 human and environmental exposures to such substance until safer alternatives are found and
367 implemented; and

368 (v) the steps the applicant shall take to identify safer alternatives in the following 3 years;

369 In granting such waivers, the department shall, in consultation with the department of public health and
370 the department of economic development, consider whether: (i) there is a need for the use of the
371 substance; (ii) there is no safer alternative feasibly available, (iii) the availability of ABC Fund assistance
372 to the applicant and (iv) the impact on the economic viability of Massachusetts businesses. Waivers shall
373 not be granted for more than 3 years.

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

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

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

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

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

388 SECTION 15. Notwithstanding any general or special law to the contrary, an employer separating one or
389 more individuals from employment as a result of this act shall notify the Department at the time of
390 separation. The local Workforce Investment Board shall work with the Rapid Response Team set aside
391 program within the Department of Workforce Development to determine a separated individuals
392 eligibility for benefits under the set aside program. The Rapid Response Team shall establish criteria to
393 determine eligibility for benefits under the set aside program. Any individual deemed eligible for benefits
394 under this act shall be entitled to receive re training, subject to the approval of the Rapid Response Team,
395 sufficient to qualify the individual to re employment at a wage not less than the wage he or she was
396 receiving at the time of separation from employment. Any individual deemed eligible for re training
397 benefits under this act shall also be eligible to receive unemployment benefits during the entire period that
398 he or she remains enrolled in and in compliance with the requirements of, any such approved retraining
399 program.

400 SECTION 16. The TURA Administrative Council shall, in consultation with the Department of
401 Environmental Protection, develop a Safer Alternatives in Products Fee, separate from the Toxics Use Fee
402 structure for large quantity toxics users. This fee shall be placed on wholesale sellers or distributors of
403 products containing priority toxic substances to entities in Massachusetts, whether or not such wholesale
404 sellers or distributors are located within the Commonwealth. The fee shall initially be set at a level
405 sufficient to raise \$2.0 million in the year following enactment of this law, \$4.0 million in the second year

406 after the enactment of this law, \$6.0 million the third year and at least \$6.0 million in each subsequent
407 year thereafter. The fee shall be adjusted every three years to reflect changes in the Consumer Price
408 Index. 75% of the fee shall be collected from larger distributors and 25% from smaller distributors, based
409 on criteria the council shall establish. In addition the department shall establish a de minimis threshold
410 for products, services and toxic substances below which no fee shall be assessed.

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

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

418 SECTION 19. Nothing in this act shall require actions which are preempted by federal law. Nothing in
419 this act shall require the adoption of occupational safety and health standards or the issuance of orders on
420 an occupational safety and health matter on which the federal Occupational Safety and Health
421 Administration has established a standard. Nothing in this chapter shall convey rights to discharge
422 priority toxic substances into the environment, to cause potential harm to individuals or the environment
423 or to create a nuisance. Nothing in this chapter shall limit the authority of local governments to restrict or
424 prohibit the use or discharge of toxic substances. Any product containing a priority toxic substance for
425 which federal law governs notice in a manner that affects state authority to act with respect to that product
426 shall be exempt from the requirements of this act to the extent required to satisfy the limits imposed by
427 the federal law with respect to state action regarding the product.