

HOUSE No. 01136

The Commonwealth of Massachusetts

PRESENTED BY:

Jay 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:
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Brian Ashe</i>	<i>2nd Hampden</i>
<i>Walter F. Timilty</i>	<i>7th Norfolk</i>
<i>Elizabeth Poirier</i>	<i>14th Bristol</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Denise Garlick</i>	<i>13th Norfolk</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Jay Kaufman</i>	<i>15th Middlesex</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>
<i>Theodore C. Speliotis</i>	<i>13th Essex</i>

<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Ruth B. Balse</i>	<i>12th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Carlo Basile</i>	<i>1st Suffolk</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>Thomas P. Conroy</i>	<i>13th Middlesex</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>John Mahoney</i>	<i>13th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Geraldine Creedon</i>	<i>11th Plymouth</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Martin J. Walsh</i>	<i>13th Suffolk</i>

HOUSE No. 01136

By Mr. Jay Kaufman of Lexington, petition (accompanied by bill, House, No. 01136) of Elizabeth Poirier and others for legislation to promote safe alternatives to toxic chemicals.. Joint Committee on Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 757 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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
5 right to clean air and water; and

6 Whereas, scientific evidence increasingly links many chronic diseases with repeated and
7 increased exposure to toxic substances. These diseases and disorders include: asthma, autism,

8 birth defects, cancers, developmental disabilities, diabetes, endometriosis, infertility, Parkinson's
9 disease, and others; and

10 Whereas the General Court finds that:

11 With regard to many toxic substances, the current regulatory system can be improved in its
12 efforts to protect the public health and the environment, and that the current system places high
13 burdens on government to act after the damage is done, rather than by the preferred method of
14 prevention;

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

19 That the Commonwealth is a leader in environmental health policy with regard to toxics as a
20 result of the Toxics Use Reduction Act (TURA), a successful law that provides many benefits to
21 businesses and the economy; however that such act can do more to address the broader need to
22 substantially reduce the use of harmful chemicals in consumer products used in workplaces and
23 homes;

24 That other states in the United States, the European Union, and other countries have adopted
25 restrictive policies regarding the use of toxic chemicals and adopted protective requirements for
26 products that at this time exceed our efforts here in the Commonwealth, and that over 40% of
27 Massachusetts trade is with those states and countries, and;

28 That safer alternatives are available for many of the toxic substances in use today that will allow
29 businesses in the Commonwealth to be more competitive by reducing costs associated with
30 health care costs, worker illnesses and turnover, materials handling and tracking, and through the
31 re-opening of local, national and international 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
34 on research, development and production of new materials, products and processes that
35 strengthen our economy while protecting our health and environment;

36 Therefore, it is the policy of the Commonwealth to ensure the substitution of priority chemical
37 substances used in the workplace, and in consumer products sold or distributed in the
38 Commonwealth, with the safest feasible alternatives.

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

41 SECTION 3. Section 2 of chapter 21I of the Massachusetts General Laws, as appearing in the
42 2008 Official Edition, is hereby amended, in line 2, by inserting after the word “meanings” the
43 following words:--

44 “unless defined otherwise in section 24 for the purposes of sections 24 through 28, inclusive.”

45 SECTION 4. Section 3 of said chapter 21I, as so appearing, is hereby amended, in line 61, by
46 inserting after the word “reduction“ the following words:- “, substitution of safer alternatives.”

47 SECTION 5. Section 6 of said chapter 21I, as so appearing, is hereby further amended, in lines
48 75 through 77, inclusive, by inserting the following paragraph after paragraph (J):

49 (J) The institute shall establish a technical assistance grant program to assist organizations of
50 consumers or workers focused on the impact of substitutions of safer alternatives in specific
51 products, sectors, or uses. The grants may provide assistance for activities that may include but
52 are not limited to securing information on chemical substances and their impact on workers,
53 consumers and the environment; hiring independent technical support regarding chemical
54 substances, production processes and work organization; and paying for training programs to
55 assist affected groups in analyzing the changes.

56 SECTION 6. Section 4 said chapter 21I, as so appearing, is hereby amended, in line 62, by
57 inserting after paragraph (G) the following paragraph:--

58 (H) In accordance with procedures that it may adopt, the advisory committee may provide
59 comment to the council on all aspects of the safer alternatives program, including
60 recommendations for chemical substances to be designated as priority chemical substances, and
61 comments relative to chemical action plans, safer alternatives assessment reports, and the
62 composition of the chemical list created in paragraph (a) of section 24. All written official
63 comment shall be considered a matter of public record. Upon written request from the advisory
64 committee, and for no more than three chemical substances annually, the council shall provide a
65 written statement to the advisory committee explaining why a chemical substance has not been
66 chosen for assessment according to the provisions of section 25.

67 SECTION 7. Chapter 21I is hereby further amended by inserting after section 6 the following
68 section:-

69 Section 6A.

70 (a) In addition to any other requirements of this chapter, the institute shall seek to reduce the
71 presence of priority chemical substances in consumer products and the workplace by promoting
72 safer alternatives to such substances. The institute may develop recognition programs to
73 promote the priority chemical substance reduction achievements of industry and communities.
74 The institute may establish fees for its safer alternatives programs. When feasible, the institute
75 shall coordinate the programs and responsibilities relative to the substitution of safer alternatives
76 for priority chemical substances with its other programs and responsibilities described in this
77 chapter.

78 (b) Without limitation, and through such programs, the institute may:

79 (1) provide general information about chemical substances and actively publicize the
80 advantages of and developments in safer alternatives and the requirements of this chapter, which
81 shall include, but not be limited to, providing information about public health, environmental and
82 economic issues associated with toxics use and toxics use reduction;

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

86 (3) develop and provide curriculum and training for higher education students and faculty on
87 priority chemical substances and potential safer alternatives;

88 (4) sponsor or engage in research to identify potential priority chemical substances and
89 potential safer alternatives to such substances;

90 (5) sponsor research or pilot projects to develop and demonstrate innovative technologies for
91 implementing safer alternatives to priority chemical substances;

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

94 (7) provide safer alternatives implementation training and assistance to citizens, community
95 groups, nonprofit organizations and institutions, workers, labor representatives, businesses,
96 consumer product supply chains and state and local government boards and officials; provided,
97 however, that such training and assistance shall provide such individuals and groups with an
98 understanding of the public health and environmental impacts of the presence of chemical
99 substances, the methods and strategies for substituting safer alternatives for priority chemical
100 substances and the requirements of this chapter.

101 (c) No later than eighteen months after enactment of this Act , the institute shall publish a list
102 of chemical substances commonly used in Massachusetts industry or in consumer products sold
103 in Massachusetts. In consultation with the science advisory board, the institute shall categorize
104 chemicals on said list into one of four categories: chemicals of high concern, chemicals of
105 concern, chemicals of unknown concern, and chemicals of low concern. In preparing this
106 categorization, the institute shall rely on published government lists of chemical categorizations
107 such as, but not limited to, the Canadian Domestic Substances List Categorization, the European
108 Commission's list of substances of very high concern, Washington State's list of persistent,
109 bioaccumulative and toxic chemicals, and the International Agency for Research on Cancer's list
110 of carcinogens. However, the chemicals of high concern category shall include chemicals
111 recognized as carcinogens, mutagens and reproductive toxins; chemicals recognized as

112 persistent, bioaccumulative and toxic chemicals; chemicals recognized as very persistent and
113 very bioaccumulative chemicals; chemicals recognized as endocrine disruptors; and other
114 chemicals of equivalent concern. The institute may create subcategories within these four
115 categories. These categories may be adjusted to take account of current chemical lists and
116 additional information, including information on emerging materials. From time to time, but at
117 least every 4 years, the institute, in consultation with the board, shall refine the list to incorporate
118 new scientific information and data, and publish a revised version of the list, as needed. Failure
119 to refine the list shall not invalidate the list.

120 SECTION 8. Section 7 of said chapter 21I, as appearing in the 2008 Official Edition, is hereby
121 amended by inserting at the end thereof the following 2 paragraphs:-

122 (K). When sufficient funds are appropriated, the office shall oversee an “Assist Business to
123 Compete Fund” (the ABC Fund) facilitating transitions to safer alternatives to the use of priority
124 chemical substances in Massachusetts workplaces and in consumer products. In developing the
125 program, the office shall determine where business assistance and financial investment can be
126 most effectively used to protect public health and strengthen the Commonwealth’s economy by
127 focusing on the development, application and promotion of safer alternatives.

128 The office shall provide technical assistance consistent with sections 6 and 7 of this chapter for
129 developing and implementing safer alternatives and including, but not limited to:

- 130 (1) direct grants and loans to businesses for costs required to implement safer alternatives;
- 131 (2) technical support focused on individual companies or user sectors;

- 132 (3) technical assistance in assessing safer alternatives and assistance with forming
133 consortiums to assess and develop safer alternatives;
- 134 (4) market development programs, to create demand for safer alternatives;
- 135 (5) seminars and workshops to assist businesses in adopting safer substitutes; and
- 136 (6) publications focused on particular user sectors.

137 The ABC Fund shall be developed with assistance from and collaboration with the department of
138 labor and industries, the department of economic development, the office, the department of
139 labor and workforce development, and the institute.

140 (L) The office shall consult with the institute, and other agencies to establish an innovative
141 business leaders program to encourage early substitution of priority chemical substances. The
142 program shall assist users of priority chemical substances to complete substitution plans. The
143 program may include priority targeted financial and technical assistance and support for
144 research, information gathering and implementation.

145 SECTION 9. Chapter 21I is hereby amended by inserting after section 23 the following 5
146 sections:

147 Section 24. Safer Alternatives Definitions

148 For the purposes of sections 24 through 28, the following terms shall have the following
149 meanings:--

150 "Alternative", a chemical substance, material, product, process, function, system, or other action
151 of equivalent function which can be substituted for the use of a particular chemical substance.

152 “Article” means a manufactured item, other than an item which is manufactured at the facility,
153 and which:

154 (a) is formed to a specific shape or design during manufacture;

155 (b) has end use functions dependent in whole or in part upon its shape or design during end
156 use; and

157 (c) does not release a chemical substance under normal conditions of processing or use of
158 that item at the facility or establishments.

159 “Chemical substance”, any element, chemical, compound, mixture of elements and/or
160 compounds, or class of compounds, provided that a chemical substance shall not be subject to
161 the provisions of sections 24 through 28, inclusive, when it is: (1) present in crude, lubricating,
162 or fuel oils or petroleum materials being held for direct wholesale or retail sale; (2) present in
163 fuels used in combustion to produce electricity, steam, or heat; (3) present as a naturally-
164 occurring substance in fuels and in emissions or byproducts as a result of the combustion of
165 fuels; or (4) required to be present or used in the manufacturing of a product manufactured in
166 Massachusetts by a contractor or subcontractor pursuant to a contract with the Department of
167 Defense or the Department of Homeland Security.

168 “Consumer product”, any item or formulation sold for residential or commercial use, including
169 any component, part or packaging, provided that consumer product shall not mean items made
170 available for use in Massachusetts for the sole purpose of redistribution, sale, supply, or lease for
171 use outside of Massachusetts.

172 “Feasible”, means meets the technical requirements for the use with a technology that has been
173 confirmed by the institute to be successfully used within or outside of the Commonwealth.

174 “Manufacturer”, any person, firm, association, partnership, corporation, governmental entity,
175 organization, combination or joint venture which produces a consumer product containing a
176 priority chemical substance or an importer or domestic distributor of a consumer product
177 containing a priority chemical substance and that is produced in a foreign country. In the case of
178 a consumer product made with components made by different manufacturers, the manufacturer is
179 the manufacturer who produced the component containing the priority chemical substance. If the
180 consumer product or component is produced in a foreign country, the manufacturer is the
181 importer or domestic distributor; provided, however, that if a company from whom an importer
182 purchases the consumer product or component has a United States presence or assets, that
183 company shall be considered to be the manufacturer.

184 Safer Alternative”, an alternative, including a change in chemical substance, material, product,
185 process, function, system or other action, that replaces a chemical substance currently in use and
186 that would be effective in reducing the chemical substance’s harm to human health or the
187 environment without causing equivalent or greater harm to workers, consumers or the
188 environment.

189 “Substitute”, to replace a chemical substance by using a safer alternative.

190 “Substitution”, the replacement of a chemical substance through the use of a safer alternative.

191 “User of a priority chemical substance” or “users of a priority chemical substance”, means a
192 person who owns or operates a facility or business that manufactures, processes, or otherwise

193 uses a priority chemical substance for non-residential purposes in the Commonwealth, provided
194 that this definition shall not apply to an article containing a priority chemical substance.

195 Section 25. Designation and Assessment of Priority Chemical Substances

196 (a) No later than twelve months after enactment of this section, the council shall promulgate
197 regulations that (i) establish processes and procedures for designating priority chemical
198 substances in accordance with subsection (b); and (ii) require notification by businesses to the
199 institute and the department in accordance with subsection (d).

200 (b) With the enactment of this section, the council shall designate cadmium,
201 trichloroethylene and nonylphenol ethoxylates as priority chemical substances.

202 (c) Upon the appropriation of sufficient resources, the council by regulation shall designate 2
203 to 4 chemical substances annually from the list of chemicals of high concern, established
204 pursuant to section 7 (c), as priority chemical substances.

205 (d) In designating the number of priority chemical substances, the council shall consider
206 institute resources for performing safer alternatives assessment reports.

207 (i). In designating priority chemical substances, the council shall prioritize substances that
208 adversely impact human health and/or the environment with highest priority given to preventing
209 adverse impacts on children, infants, developing fetuses, and workers, and other vulnerable
210 populations. In designating priority chemical substances the council may consider opportunities
211 that strengthen the Commonwealth's economy.

212 (ii). Each designation of a priority chemical substance shall include appropriate de minimis
213 thresholds below which the requirements of section 25(d)(i) and section 25(d)(ii) shall not apply.

214 (c) No consumer product containing a priority chemical substance shall be sold, offered for
215 sale, or distributed for use in the Commonwealth unless the product's manufacturer has
216 submitted notification to the institute and the department in accordance with section 25(d). No
217 priority chemical substance shall be used within the Commonwealth unless the user of a priority
218 chemical substance has submitted notification to the institute and the department in accordance
219 with section 25(d).

220 (d) Manufacturers and users of a priority chemical substance shall notify the institute and the
221 department within six months of the designation of that substance in accordance with the
222 following:

223 (i) Manufacturers shall file a notice with the institute and the department identifying the
224 consumer product, the approximate number of units distributed in the Commonwealth, an
225 estimate of the amount or concentration of the priority chemical substance contained in each
226 unit, the purpose for including the priority chemical substance, and the name, address, and phone
227 number of a contact person, and other relevant information the department may require. The
228 department may allow a manufacturer, distributor or trade group to supply the information
229 required above for a consumer product category rather than an individual consumer product.
230 The manufacturer shall update and revise the notification whenever there is a significant change
231 in the information or when requested by the department.

232 (ii) Users of a priority chemical substance shall file notice with the institute and the department
233 identifying the name and address of each facility where the priority chemical substance is
234 manufactured, processed, or otherwise used, the mass of each priority chemical substance
235 manufactured, processed, or otherwise used, the purpose for using the priority chemical

236 substance, and the name, address, and phone number of a contact person, and other relevant
237 information the department may require. The user of a priority chemical substance shall update
238 and revise the notification whenever there is a significant change in the information or when
239 requested by the department. Large quantity toxics users and other toxics users within a
240 designated priority user segments already subject to reporting on a priority chemical substance
241 under section 10 shall be exempt from the requirements of this section for that priority chemical
242 substance.

243 (iii) The department shall prescribe forms for such notices to be filed and a means by which the
244 submitted information shall be made available to the public.

245 (iv) The department shall establish procedures to assure compliance with the requirements of
246 this section and penalties for noncompliance.

247 (v) Distribution of information:

248 i. Public disclosure of confidential business information submitted to the institute and the
249 department pursuant to subsection (d) shall be governed by the requirements of section 10 of
250 chapter 66.

251 ii. Manufacturers of a consumer product containing a priority chemical substance shall
252 provide notice to any person who sells, offers to sell, or distributes such product for use in the
253 Commonwealth, identifying the priority chemical substance, its purpose in the consumer
254 product, any measures that should be undertaken to reduce a user's exposure to the priority
255 chemical substance, and proper management for discarding the consumer product safely at the
256 end of its useful life. Any person who sells, offers to sell, or distributes such a consumer
257 product for use in the commonwealth shall provide such notice to all purchasers of the product.

258 iii. Users of a priority chemical substance shall provide notice to workers in their facility or
259 business regarding the use of the priority chemical substance.

260 b. Preemption. Any consumer product containing a priority chemical substance for which
261 federal law governs notice in a manner that preempts state authority shall be exempt from the
262 requirements of subsection (d).

263 (e) The institute shall prepare a Safer Alternatives Assessment Report for each substance
264 designated by the council as a priority chemical substance. The council shall establish a
265 schedule for the development of each safer alternatives assessment report, in consultation with
266 the institute. For each safer alternatives assessment report, the institute shall:

267 (i). identify the uses and functions of the priority chemical substance (including its
268 incorporation into consumer products), focusing on uses and functions in the Commonwealth.
269 Uses and functions shall be identified and selected for further study and action, with highest
270 priority given to uses that adversely impact children, infants, developing fetuses, and workers,
271 and other vulnerable populations, consistent with the criteria set forth in section 25(b)(ii).

272 (ii). identify whether alternatives are available for those selected uses and functions of the
273 priority chemical substance;

274 (iii). identify whether any of the selected uses of the priority chemical substance are of a
275 clearly unnecessary nature;

276 (iv). research and study relevant factors to characterize feasible alternatives;

277 (v). provide a qualitative discussion of the economic viability, opportunities and costs
278 associated with adopting and implementing any safer alternatives. Such discussion may include a

279 qualitative characterization of the economic impacts and benefits of substitution, the extent of
280 human exposure to the priority chemical substance that could be eliminated through substitution
281 or other actions and potential public health benefits or reductions in health care costs;

282 (vi). identify selected uses of the priority chemical substance that do not currently have a
283 feasible safer alternative available and make recommendations for promoting research and
284 development of such alternatives; and any interim actions that may be taken to reduce human
285 exposure to the priority chemical substance until a feasible alternative is available;

286 (vii). use the chemicals categorization list developed by the institute and other published
287 chemical lists, including government lists of substances used in industry or in consumer
288 products, to assist in identifying potential safer alternatives;

289 (viii). seek comments from the science advisory board, the advisory committee and members of
290 the public, including all regions of the commonwealth;

291 (ix). publish the results of the safer alternatives assessment report; and

292 (x). periodically review the safer alternative assessment report and its findings with the
293 advisory committee and the council and revise such report as necessary to update it and to
294 address new recommendations. Revised reports shall be made available to the public for
295 comment, and final revised reports shall be published. Such periodic reviews shall be conducted
296 no less frequently than once every five years.

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

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

303 Section 26. Designation of Priority Chemical Substance Uses

304 (a) The institute shall present each completed safer alternatives assessment report to the
305 council. The council shall use the completed report to identify uses of the priority chemical
306 substance that pose a significant hazard to human health or the environment, with highest
307 priority given to uses that adversely impact children, infants, developing fetuses, and workers,
308 and other vulnerable populations. In identifying such uses of the priority chemical substance, the
309 council shall consider both uses of the priority chemical substance itself as well as uses of
310 consumer products that contain the priority chemical substance. The council shall designate any
311 such uses as priority chemical substance uses.

312 (b) Based on the information and recommendations of the completed safer alternatives
313 assessment report, the council shall also determine whether one or more feasible safer
314 alternatives exist for a priority chemical substance in a priority chemical substance use, and shall
315 identify all such feasible safer alternatives in its designation.

316 Section 27. Chemical Action Plans

317 (a) Not later than eighteen months after the council identifies priority chemical substance
318 uses, the department, in consultation with the institute, the office, the advisory committee, and
319 other agencies as appropriate, shall prepare a chemical action plan for the priority chemical
320 substance, which addresses the priority chemical substance use(s) designated by the council.

321 The chemical action plan shall include draft regulations, for review by the council and members
322 of the public.

323 (b) A chemical action plan addressing a priority chemical substance for which feasible safer
324 alternatives have been identified for one or more designated priority uses shall establish a goal of
325 accomplishing the substitution of the identified safer alternative(s) for the priority chemical
326 substances in those designated priority chemical substance uses as expeditiously as possible.

327 The chemical action plan shall establish requirements through which manufacturers and users of
328 such priority chemical substance shall accomplish this goal, and shall also describe actions to be
329 undertaken by appropriate state agencies to ensure the goal of the plan is met.

330 (i) Where possible, the chemical action plan shall seek to strengthen Massachusetts business
331 and develop job opportunities, and to coordinate state activities to accomplish this goal. In
332 preparing the chemical action plan, the department shall consult with the institute, the office, and
333 other relevant state agencies and authorities to identify and plan for coordinated actions of these
334 agencies and authorities to achieve the plan's goal.

335 (ii) To accomplish the goals established in section 27(b) and section 27(b)(i), a chemical action
336 plan for a priority chemical substance use with feasible alternatives shall:

337 (a) identify specific actions that manufacturers and users of priority chemical substances
338 shall be required to implement;

339 (b) require substitution of a safer alternative;

340 (c) establish schedules, timelines, and deadlines for achieving substitution of the priority
341 chemical substance with safer alternatives, for specified priority uses;

342 (d) where appropriate, require manufacturers and/or users of priority chemical substances to
343 prepare and submit to the department plans to effect the substitution(s); and

344 (e) provide for technical assistance to manufacturers and users of priority chemical
345 substances.

346 (iii) In establishing deadlines and schedules for substituting safer alternatives for priority
347 chemical substances, the department shall consider the potential impacts to human health and the
348 environment of the continued use of the priority chemical substance. If children or workers will
349 continue to be exposed to one or more priority chemical substances during the period in which
350 substitution is being implemented, then the chemical action plan shall include measures a
351 manufacturer or user of a priority chemical substance, as appropriate, shall take to eliminate or
352 reduce exposure of a priority chemical substance to those populations.

353 (iv) For uses where safer alternatives are feasible, but where substitution will require
354 manufacturers or users of priority chemical substances to make significant expenditures, such as
355 for consumer product reformulation, new equipment or training, the chemical action plan shall
356 include a targeted ABC Fund program. The timetable for completing substitutions established in
357 a chemical action plan shall take into consideration the financial needs of the manufacturers and
358 users of the priority chemical substance.

359 (v) Where substitution planning requirements are imposed on large quantity toxics users or
360 toxics users within priority user segments, those toxics users shall be exempt from the
361 requirements of section 12 of this chapter for that particular priority chemical substance for as
362 long as the substitution requirements are in effect.

363 (c) Where the council has not identified feasible safer alternatives for one or more priority
364 uses of a priority chemical substance, the chemical action plan shall: identify steps that
365 manufacturers and users of a priority chemical substance, state agencies and others (as
366 appropriate) shall take to identify or develop a feasible safer alternative for the priority chemical
367 substance use; shall require manufacturers and users of priority chemical substances to reduce
368 human exposure to and environmental contamination from the priority chemical substance in that
369 use; where possible seek to strengthen Massachusetts business and develop job opportunities;
370 and coordinate state activities to accomplish this goal. In preparing the chemical action plan, the
371 department shall consult with the institute, the office, and other relevant state agencies and
372 authorities to develop a plan that coordinates the actions of these agencies and authorities to
373 achieve the plan's goal. The department shall consider the potential impacts to human health and
374 the environment of the continued and unmitigated use of the priority chemical substance. The
375 chemical action plan for priority uses of a priority chemical substance for which the council has
376 not identified a feasible safer alternative may include, but shall not be limited to, the following:

377 (i). research into and development of safer alternatives to the use of a priority chemical
378 substance (such investigations may address specific priority chemical substance uses or specific
379 applications within a consumer product category);

380 (ii). where appropriate, requirements for handling, storage and/or waste management, as
381 appropriate to reduce exposure to workers and consumers to the priority chemical substance in
382 priority uses;

383 (iii). requirements for consumer product labeling and other notification to users that a
384 consumer product contains a priority chemical substance and advice on the proper handling and
385 disposal to minimize human exposure to the priority chemical substance; and

386 (iv). limitations on certain continued uses of the priority chemical substance in specific
387 applications, as appropriate.

388 (d) Each chemical action plan shall include draft regulations required for implementation.
389 Such regulations shall include appropriate requirements for manufacturers and users of priority
390 chemical substances to file with the department plans to achieve compliance, periodic reports
391 about progress toward implementation or about continued use of the priority chemical substance,
392 and periodic certifications of compliance with any substitution or risk reduction requirements, or
393 alternatively:

394 (i). authorize the filing with the department of an application to use an alternative substance
395 that has not been identified as an acceptable alternative, documenting with toxicity and exposure
396 data how the proposed alternative substance would ensure protection of health and the
397 environment and, in response to such request, the department, in consultation with the institute,
398 shall determine whether such alternative is acceptable, or

399 (ii). authorize the filing with the department of an application for a waiver of a substitution
400 deadline, certifying that there is no safer alternative that is technically or economically feasible
401 for a particular use of the substance; provided, however, that such waiver application shall
402 include:

403 (a) identification of the specific use of the priority chemical substance for which a waiver is
404 sought;

405 (b) identification of all alternatives considered and their cost and feasibility considerations;

406 (c) the basis for finding that there is no feasible safer alternative;

407 (d) documentation of any efforts to be taken to minimize the use of the priority chemical

408 substance and of human and environmental exposures to such substance until safer alternatives

409 are found and implemented; and

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

411 (e) In deciding whether to grant a waiver, the department shall consider: (i) whether there is

412 a need for the use of the substance; (ii) whether no safer alternative is feasibly available, (iii)

413 whether ABC Fund assistance is available to the applicant and (iv) the impact on the economic

414 viability of Massachusetts businesses. Waivers shall not be granted for more than three years. In

415 deciding whether to grant a waiver application, the department may consult with the institute, the

416 office, and the department of economic development.

417 (f) After the department has prepared a draft chemical action plan, including draft

418 regulations, the draft plan shall be submitted to the council, and to the public for comment

419 pursuant to chapter 30A. The final chemical action plan (which shall contain the department's

420 final regulations) shall be approved by the council prior to promulgation of the regulations by the

421 department.

422 (g) A chemical action plan may be updated and amended from time to time by the

423 department to reflect new scientific and/or technical information about the hazards posed by a

424 priority chemical substance, the availability a safer alternatives for a priority chemical substance

425 in a particular priority use, the feasibility of substituting a safer alternative for a priority chemical

426 substance, new priority uses of a priority chemical substance, and other information without
427 limitation. Any such revised chemical action plan shall contain draft implementing regulations
428 prepared by the department. Once a final revised chemical action plan is approved by the
429 council, the department shall promulgate final implementing regulations.

430 Section 28. Interstate Cooperation in Chemical Substance Regulation

431 Certain functions provided for in this chapter may be transferred to or carried out in cooperation
432 with an interstate entity. The interstate entity may, among other functions: compile and
433 categorize chemical lists, produce alternatives assessment reports; develop model chemical
434 action plans and consumer product or chemical use registries. The department may promulgate
435 regulations to carry out this section.

436 SECTION 10. Violations of the Safer Alternatives Act

437 (a) Paragraph (B) of section 21 of chapter 21I of the General Laws as so appearing in the 2008
438 Official Edition is hereby amended by inserting in line XX after the word “twenty,” the
439 following words:

440 “or any person who violates any requirement of sections 24 through 28, inclusive,”

441 (b) Section 21 of chapter 21I of the General Laws as so appearing in the 2008 Official Edition
442 is hereby amended by adding after subsection (C) the following subsection:

443 (D) End users of consumer products shall not be subject to enforcement action under this
444 chapter.

445 SECTION 11. Notwithstanding any general or special law to the contrary, an employer
446 separating one or more individuals from employment as a result of this act shall notify the

447 Department of Workforce Development at the time of separation. The local Workforce
448 Investment Board shall work with the Rapid Response Team set aside program within the
449 Department of Workforce Development to determine a separated individual's eligibility for
450 benefits under the set aside program. The Rapid Response Team shall establish criteria to
451 determine eligibility for benefits under the set aside program. Any individual deemed eligible for
452 benefits under this act shall be entitled to receive re-training, subject to the approval of the Rapid
453 Response Team, sufficient to qualify the individual for re-employment at a wage not less than
454 the wage he or she was receiving at the time of separation from employment. Any individual
455 deemed eligible for re-training benefits under this act shall also be eligible to receive
456 unemployment benefits during the entire period that he or she remains enrolled in, and in
457 compliance with, the requirements of any such approved retraining program.

458 SECTION 12. Study of Funding Mechanisms for the Safer Alternatives in Products Program

459 (a) No later than one year after enactment of this section , the institute, in consultation with
460 the department and the office, shall complete a study on alternative funding mechanisms for the
461 safer alternatives in products program including, but not limited to, fees on manufacturers or
462 distributors of products containing priority chemical substances. The report shall be submitted to
463 the Joint Committee on Environment, Natural Resources and Agriculture. The institute shall
464 consider potential revenues generated by the fees, existing models for applying fees to consumer
465 products, the expected impact of fees on manufacturers and suppliers of products containing
466 toxic substances, and relationship to existing toxics user fees, the funding required for the
467 program to meet its statutory obligations and other relevant subjects. In preparing its report, the
468 institute shall consult with the administrative council and an ad hoc advisory committee,

469 including representatives from the legislature, business, environmental advocacy, public health
470 and labor communities.

471 (b) Following receipt of the report from the institute, the Joint Committee shall make
472 recommendation to the full House and Senate on the structure of the proposed fee with a vote to
473 be taken on the recommendation within one year.

474 SECTION 13. Nothing in this act shall require actions preempted by federal law.