

**HOUSE . . . . . No. 757**

**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:
Jay R. Kaufman	15th Middlesex
William N. Brownsberger	24th Middlesex
Denise Provost	27th Middlesex
Willie Mae Allen	6th Suffolk
James Arciero	2nd Middlesex
Geraldo Alicea	6th Worcester
James E. Vallee	10th Norfolk
Ruth B. Balser	12th Middlesex
Garrett J. Bradley	3rd Plymouth
William G. Greene, Jr.	22nd Middlesex
Antonio F.D. Cabral	13th Bristol
Louis L. Kafka	8th Norfolk
John P. Fresolo	16th Worcester
Theodore C. Speliotis	13th Essex
John J. Binienda	17th Worcester
James Cantwell	4th Plymouth
James H. Fagan	3rd Bristol
Matthew C. Patrick	3rd Barnstable
Martha M. Walz	8th Suffolk

David B. Sullivan	6th Bristol
Tom Sannicandro	7th Middlesex
Kevin G. Honan	17th Suffolk
Peter v. Kocot	1st Hampshire
Kay Khan	11th Middlesex
Jennifer Benson	37th Middlesex
Sean Garballey	23rd Middlesex
Carlo P. Basile	1st Suffolk
Stephen R. Canessa	12th Bristol
Thomas J. Calter	12th Plymouth
James Dwyer	30th Middlesex
Robert P. Spellane	13th Worcester
Bill Bowles	2nd Bristol
Cheryl A. Coakley-Rivera	10th Hampden
Lori Ehrlich	8th Essex
Gloria L. Fox	7th Suffolk
Alice K. Wolf	25th Middlesex
Mark V. Falzone	9th Essex
Peter J. Koutoujian	10th Middlesex
James J. O'Day	14th Worcester District
Katherine Clark	32nd Middlesex
Thomas P. Conroy	13th Middlesex
Linda Dean Campbell	15th Essex
Paul J. Donato	35th Middlesex
Steven J. D'Amico	4th Bristol
Ellen Story	3rd Hampshire
Stephen Kulik	1st Franklin
Brian P. Wallace	4th Suffolk
Martin J. Walsh	13th Suffolk
Steven M. Walsh	11th Essex
Elizabeth A. Malia	11th Suffolk
Bruce J. Ayers	1st Norfolk
Richard J. Ross	9th Norfolk
Thomas A. Golden, Jr.	16th Middlesex
Byron Rushing	9th Suffolk
Christopher J. Donelan	2nd Franklin
Jason Lewis	31st Middlesex
Elizabeth Poirier	14th Bristol
Karyn E. Polito	11th Worcester
Christopher G. Fallon	33rd Middlesex
Angelo J. Puppolo, Jr.	12th Hampden
Frank I. Smizik	15th Norfolk

Thomas M. Stanley	9th Middlesex
Timothy J. Toomey, Jr.	26th Middlesex
Sarah K. Peake	4th Barnstable
Christine E. Canavan	10th Plymouth
Barry R. Finegold	17th Essex
Carl M. Sciortino, Jr.	34th Middlesex
James M. Murphy	4th Norfolk
David P. Linsky	5th Middlesex
Allen J. McCarthy	7th Plymouth
Patricia A. Haddad	5th Bristol
David L. Flynn	8th Plymouth
Geraldine Creedon	11th Plymouth
A. Stephen Tobin	2nd Norfolk
Stephen L. DiNatale	3rd Worcester
James R. Miceli	19th Middlesex
Joyce A. Spiliotis	12th Essex
James B. Eldridge	Middlesex and Worcester
F. Jay Barrows	1st Bristol
Mary E. Grant	6th Essex
Barbara A. L'Italien	18th Essex
Robert L. Rice, Jr.	2nd Worcester
Cleon H. Turner	1st Barnstable
Jeffrey Sánchez	15th Suffolk
William Lantigua	16th Essex
Jonathan Hecht	29th Middlesex
Kathi-Anne Reinstein	16th Suffolk
Jennifer M. Callahan	18th Worcester
Michael Brady	9th Plymouth
Robert F. Fennell	10th Essex
Michael F. Rush	10th Suffolk
Paul McMurtry	11th Norfolk
Kevin J. Murphy	18th Middlesex
Kate Hogan	3rd Middlesex
Robert J. Nyman	5th Plymouth
Cory Atkins	14th Middlesex
Linda Dorcena Forry	12th Suffolk

# The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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

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

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

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

*Whereas* the General Court finds that:

With regard to many other toxic substances, the current regulatory system has failed to protect health and environment due to fundamental flaws, namely that it places high burdens on government to act, primarily after the damage is done rather than by prevention through seeking the safest alternatives to toxics as they become available;

That the current regulatory system for toxic chemicals has particularly failed to protect vulnerable populations including the developing fetus and child; people who are vulnerable due to health conditions

or genetic predispositions; and low-income communities or disadvantaged workers who are overburdened with greater exposure to these toxic substances;

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

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

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

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

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

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

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

7 **SECTION 2.**

8 2020-0200 The secretary of energy and environmental affairs shall expend for the purposes of carrying  
9 out this act, and amount not to exceed \$4,200,000 from funds raised through the Safer Alternatives in  
10 products Fee ; provided that funds shall be expended for the programs and duties of the office of technical  
11 assistance and the department of environmental protection pertaining to this act, including business  
12 assistance and development, provided further that the secretary may contract with the executive office of  
13 housing and economic development in order to provide retraining benefits; and provided further that the  
14 department of environmental protection shall annually file a report with the house and senate committees  
15 on ways and means as well as with the joint committee on environment, natural resources and agriculture  
16 detailing expenditures under this item in the preceding fiscal year.....\$4,200,000.

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

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

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

31 7100-0301 The state treasurer shall disburse 30 per cent, but not more than \$1,800,000, from funds  
32 collected through the Safer Alternatives in Products Fee, for the Safer Alternatives activities of the Toxics  
33 Use Reduction Institute at the University of Massachusetts at Lowell, a portion of which may be  
34 subcontracted to the University of Massachusetts at Worcester and for the University of Massachusetts at  
35 Amherst for assistance with assessment reports and toxics research; provided further that the institute  
36 shall annually file a report detailing expenditures under this item with the chairs of the house and senate  
37 committees on ways and means as well as with the joint committee on environment, natural resources and  
38 agriculture.....\$1,800,000

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

44 **SECTION 3.** Section 2 of chapter 21I of the General Laws, as appearing in the 2006 Official Edition, is  
45 hereby amended by inserting after the definition of “Agency” the following definition:  
46 “Alternative”, an activity, technology, material or method of equivalent function which can be substituted  
47 for the use of a particular chemical.

48 **SECTION 4.** Said section 2 of said chapter 21I, as so appearing, is hereby further amended by inserting  
49 after the definition of “Manufacture” the following definitions:--

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

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

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

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

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

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

74 “Priority toxic substance”, a chemical substance designated by the council from the list of  
75 chemicals of high concern,

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

78 **SECTION 6.** Said section 2 of said chapter 21I, as so appearing, is hereby further amended by  
79 inserting after the definition of “Resource conservation” the following 2 definitions:-  
80 “Safer alternative”, an option, including a change in toxic substance, material, product, process,  
81 function, system or other action, to replace a toxic substance currently in use and which would be  
82 effective in reducing the overall potential for harm to human health or the environment.  
83 “Safer alternatives assessment report”, the alternatives assessment completed for each priority  
84 toxic substance by the Institute.

85 **SECTION 7.** Said section 2 of said chapter 21I, as so appearing, is hereby further amended by  
86 inserting after the definition of “State agency” the following definition:-  
87 “Substitution”, the replacement or reduction of a hazardous substances by selecting a less  
88 hazardous or nonhazardous substance or by changing a production process, product function or  
89 design.

90 **SECTION 8.** Said section 2 of said chapter 21I, as so appearing, is hereby further amended by  
91 striking out the definition of “Toxic or hazardous substance” and inserting in place thereof the  
92 following definition:-  
93 Toxic or hazardous substance”, a substance in any form which is identified on the toxic or  
94 hazardous substance list established pursuant to section 9; provided, however, that a toxic or  
95 hazardous substance shall not be subject to sections 1 to 23, inclusive, when it is: (1) present in  
96 an article; (2) used as a structural component of a facility; (3) present in a product used for  
97 routine janitorial or facility grounds maintenance; (4) present in food, drugs, cosmetics or other  
98 personal items used by employees or other persons at a facility; (5) present in a product used for  
99 the purpose of maintaining motor vehicles operated by a facility; (6) present in process water or  
100 noncontact cooling water as drawn from the environment or from municipal sources, or present  
101 in air used either as compressed air or as part of combustion; (7) present in a pesticide or  
102 herbicide when used in agricultural applications (8) present in crude, lubricating or fuel oils or  
103 other petroleum materials being held for direct wholesale or retail sale; or (9) present in fuels  
104 used in combustion to produce electricity, steam or heat, except when production of electricity,  
105 steam or heat is the primary business of a facility; and provided further, that a toxic or hazardous  
106 substance shall not be subject to sections 24 to 28, inclusive, when it is: (1) present in fuel oils or  
107 petroleum materials being held for direct wholesale or retail sale; (2) present in fuels used in  
108 combustion to produce electricity, steam or heat; or (3) present as a naturally-occurring  
109 substance in fuels and in emissions or byproducts as a result of the combustion of fuels 4)  
110 present or used in the manufacturing of a product manufactured in Massachusetts by a contractor  
111 or subcontractor pursuant to a contract with the Department of Defense or the Department of  
112 Homeland Security.

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

115 **SECTION 10.** Said section 3 of said chapter 21I, as so appearing, is hereby further amended by  
116 striking out paragraph (J) and inserting in place thereof the following paragraph:-  
117 (J) The office of technical assistance shall establish technical assistance grants to organizations  
118 of consumers or workers focused on the impact of substitutions of safer alternatives in specific  
119 sections. The grants may include assistance in securing information on technologies and their



120 impact on workers, consumers and the environment; hiring independent technical support  
121 regarding technologies, processes and work organization; and paying for training programs to  
122 assist affected groups in analyzing the changes.

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

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

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

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

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

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

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

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

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

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

161 (7) subject to appropriation, provide safer alternatives implementation training and assistance to  
162 citizens, community groups, nonprofit organizations and institutions, workers, labor  
163 representatives, businesses, product supply chains and state and local government boards and

164 officials; provided, however, that such training and assistance shall provide such individuals and  
165 groups with an understanding of the public health and environmental impacts of the presence of  
166 toxic or hazardous substances, the methods and strategies for substituting safer alternatives for  
167 priority toxic substances and the requirements of this chapter.

168 (c ) No later than July 1, 2010, the Institute shall publish a chemicals categorization list for  
169 chemicals commonly used in Massachusetts industry or in products sold in Massachusetts. The  
170 institute will rely on the Science Advisory Board to categorize chemicals on the chemicals  
171 categorization list into one of four categories: chemicals of high concern, chemicals of concern,  
172 chemicals of unknown concern, and chemicals of low concern. In preparing this categorization  
173 the Science Advisory Board will rely on published government lists of chemical categorizations  
174 such as, but not limited to, the Canadian Domestic Substances List Categorization, the European  
175 Commission’s list of substances of very high concern, Washington State’s list of persistent,  
176 bioaccumulative and toxic chemicals, the International Agency for Research on Cancer’s list of  
177 carcinogens. However, the chemicals of high concern category must include those chemicals  
178 recognized as carcinogens, mutagens and reproductive toxins; chemicals recognized as  
179 persistent, bioaccumulative and toxic chemicals; chemicals recognized as very persistent and  
180 very bioaccumulative chemicals; chemicals recognized as endocrine disruptors; and other  
181 chemicals of equivalent concern. The institute may create subcategories within these four  
182 categories. These categories may be adjusted to take account of current chemical lists and  
183 additional information, including information on emerging materials. At periodic points, but at  
184 least every 4 years, and within 4 years after publication of the list, the institute and the Science  
185 Advisory Board shall refine the list to incorporate new scientific information and data, and  
186 publish a refined version of the list.

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

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

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

- 197 1. direct grants and loans to businesses for costs required to implement safer alternatives
- 198 2. technical support focused on individual companies or user sectors;
- 199 3. technical assistance in assessing safer alternatives and assistance with forming  
200 consortiums to assess and develop safer alternatives
- 201 4. market development programs, to create demand for safer alternatives;
- 202 5. seminars and workshops to assist businesses in adopting safer substitutes; and
- 203 6. publications focused on particular user sectors.

204 The ABC Fund shall be developed with assistance and collaboration with the department of labor  
205 and industries, department of economic development, the office of technical assistance of the  
206 executive office of environmental affairs, department of labor and workforce development, and  
207 the institute.

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

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

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

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

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

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

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

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

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

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

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

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

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

246 (d) The institute shall publish the results of the safer alternatives assessment report for each

247 substance assessed.

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

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

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

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

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

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

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

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

284 (b) Not later than 1 year after the council identifies priority toxic substance uses, the department,  
285 in consultation with the institute, office of technical assistance, and the advisory committee, shall  
286 complete a chemical action plan for that substance, focusing on priority uses, including uses in  
287 products. The goal of the chemical action plan shall be to coordinate state agency activities and  
288 to require users of priority toxic substances to act as expeditiously as possible to ensure  
289 substitution of the priority toxic substances with safer alternatives, while also where possible

290 seeking to strengthen Massachusetts business, and develop job opportunities. The chemical  
291 action plan shall identify specific actions that users of priority toxic substances shall be required  
292 to implement, on a schedule to be established in the plan, to: (i) substitute a safer alternative for  
293 the priority toxic substance in specific uses when feasible; and (ii) reduce human exposure to and  
294 environmental contamination from such substance.

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

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

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

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

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

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

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

316 (ii) substitution planning requirements on users;

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

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

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

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

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

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

331 (e) Based on a chemical action plan as adopted by the council, the department shall, promulgate  
332 regulations to restrict the use of priority toxic substances for specified uses and within consumer  
333 products. Such regulations shall establish a substitution deadline, substitution planning

334 requirements for specific of each priority toxic substance use, and specify acceptable  
335 alternatives.

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

- 337 (1) require toxics users and other persons to file with the department a certification of  
338 compliance with any substitution or other requirement promulgated by the department, or  
339 (2) authorize the filing with the department of an application to use an alternative substance that  
340 has not been identified as an acceptable alternative, documenting with toxicity and exposure data  
341 how the proposed alternative substance would ensure protection of health and the environment  
342 and, in response to such request, the department shall determine whether such alternative is  
343 acceptable, or  
344 (3) authorize the filing with the department of an application for a waiver of a substitution  
345 deadline, certifying that there is no safer alternative that is technically or economically feasible  
346 for a particular use of the substance; provided, however, that such waiver application shall  
347 include:

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

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

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

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

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

369

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

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

376 **SECTION 15.** Notwithstanding any general or special law to the contrary, an employer  
377 separating one or more individuals from employment as a result of this act shall notify the  
378 Department at the time of separation. The local Workforce Investment Board shall work with the  
379 Rapid Response Team set aside program within the Department of Workforce Development to  
380 determine a separated individuals eligibility for benefits under the set aside program. The Rapid  
381 Response Team shall establish criteria to determine eligibility for benefits under the set aside  
382 program. Any individual deemed eligible for benefits under this act shall be entitled to receive re  
383 training, subject to the approval of the Rapid Response Team, sufficient to qualify the individual  
384 to re employment at a wage not less than the wage he or she was receiving at the time of  
385 separation from employment. Any individual deemed eligible for re training benefits under this  
386 act shall also be eligible to receive unemployment benefits during the entire period that he or she  
387 remains enrolled in and in compliance with the requirements of, any such approved retraining  
388 program.

389 **SECTION 16.** The TURA Administrative Council shall, in consultation with the Department of  
390 Environmental Protection, develop a Safer Alternatives in Products Fee, separate from the Toxics Use Fee  
391 structure for large quantity toxics users. This fee shall be placed on wholesale sellers or distributors of  
392 products containing priority toxic substances to entities in Massachusetts, whether or not such wholesale  
393 sellers or distributors are located within the Commonwealth. The fee shall initially be set at a level  
394 sufficient to raise \$2.0 million in the year following enactment of this law, \$4.0 million in the second year  
395 after the enactment of this law, \$6.0 million the third year and at least \$6.0 million in each subsequent  
396 year thereafter. The fee shall be adjusted every three years to reflect changes in the Consumer Price  
397 Index. 75% of the fee shall be collected from larger distributors and 25% from smaller distributors, based  
398 on criteria the council shall establish. In addition the department shall establish a de minimis threshold  
399 for products, services and toxic substances below which no fee shall be assessed.

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

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

407 **SECTION 19.** Nothing in this act shall require actions which are preempted by federal law. Nothing in  
408 this act shall require the adoption of occupational safety and health standards or the issuance of orders on  
409 an occupational safety and health matter on which the federal Occupational Safety and Health  
410 Administration has established a standard. Nothing in this chapter shall convey rights to discharge  
411 priority toxic substances into the environment, to cause potential harm to individuals or the environment  
412 or to create a nuisance. Nothing in this chapter shall limit the authority of local governments to restrict or  
413 prohibit the use or discharge of toxic substances. Any product containing a priority toxic substance for  
414 which federal law governs notice in a manner that affects state authority to act with respect to that product

415 shall be exempt from the requirements of this act to the extent required to satisfy the limits imposed by  
416 the federal law with respect to state action regarding the product.