

HOUSE No. 783

By Representative Kaufman of Lexington and Senator Tolman, joint petition of Jay R. Kaufman and others relative to adopting a more restrictive policy regarding the use of toxic chemicals in the Commonwealth. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

PETITION OF:

Jay R. Kaufman	James R. Miceli
Steven A. Tolman	Jennifer L. Flanagan
Gloria L. Fox	John D. Keenan
Kay Khan	John W. Scibak
Pamela P. Resor	Joyce A. Spiliotis
Alice Hanlon Peisch	Kathi-Anne Reinstein
Alice K. Wolf	Kevin G. Honan
Anne M. Gobi	Lewis G. Evangelidis
Antonio F. D. Cabral	Lida E. Harkins
Barbara A. L'Italien	Louis L. Kafka
Benjamin Swan	Mark V. Falzone
Brian A. Joyce	Mark C. Montigny
Bruce E. Tarr	Martha M. Walz
Carl M. Sciortino, Jr.	Mary E. Grant
Christine E. Canavan	Matthew C. Patrick
Christopher G. Fallon	Michael A. Costello
Cleon H. Turner	Michael E. Festa
Cory Atkins	Michael F. Rush
Cynthia S. Creem	Patricia D. Jehlen
David B. Sullivan	Patrick M. Natale
David Paul Linsky	Paul C. Casey
Demetrius J. Atsalis	Peter J. Koutoujian
Denise Provost	Peter V. Kocot
Dianne Wilkerson	Rachel Kaprielian
Douglas W. Petersen	Robert J. Nyman
Edward M. Augustus, Jr.	Robert K. Coughlin
Elizabeth A. Poirier	Robert A. O'Leary
Elizabeth A. Malia	Robert L. Rice, Jr.
Ellen Story	Robert S. Creedon, Jr.
Frank M. Hynes	Ruth B. Balser
Gale D. Candaras	Sarah K. Peake
Geoffrey D. Hall	William Smitty Pignatelli
Geraldine Creedon	Stanley C. Rosenberg
Harold P. Naughton, Jr.	Steven J. D'Amico
James E. Tilty	Stephen Kulik
James E. Vallee	Susan C. Fargo
James B. Eldridge	Susan C. Tucker
James M. Murphy	Theodore C. Spiliotis
J. James Marzilli, Jr.	Thomas A. Golden, Jr.

Tom Sannicandro	Martin J. Walsh
Thomas M. Stanley	Scott P. Brown
Timothy J. Toomey, Jr.	Barry R. Finegold
William C. Galvin	Steven M. Walsh
William Lantigua	Eric Turkington
William N. Brownsberger	Thomas P. Kennedy
Willie Mae Allen	Robert P. Spellane
Byron Rushing	Thomas P. Conroy
Anthony Petrucci	Walter F. Timilty
Kevin J. Murphy	Garrett J. Bradley
Bradford Hill	Jennifer M. Callahan

In the Year Two Thousand and Seven.

AN ACT FOR A HEALTHY MASSACHUSETTS 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 SECTION 1. Title. This Act shall be known and may be cited
2 as “An Act for a Healthy Massachusetts: Safer Alternatives to
3 Toxic Chemicals.”

1 SECTION 2. Legislative findings.

2 Whereas, Article 97 of the Constitution of Massachusetts pro-
3 vides that the people shall have the right to clean air and water;
4 and

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

10 *Whereas*, more than 80,000 synthetic chemicals have been pro-
11 duced for use in the U.S since World War II, yet very few have
12 ever been adequately tested for their potential impact on our
13 health. The substances have contaminated the air we breathe, the
14 water and food we consume, everyday products, our homes,
15 schools, workplaces-and therefore end up in our bodies; and

16 *Whereas*, the Massachusetts Zero Mercury Action Plan of the
17 Executive Office of Environmental Affairs demonstrates how an

18 action plan can protect public health from a toxic substance
19 through a gradual program of phasing out a hazardous substance
20 and implementing safer alternatives; and

21 *Whereas* the General Court finds that:

22 With regard to many other toxic substances, the current regula-
23 tory system has failed to protect health and environment due to
24 fundamental flaws, namely that it places high burdens on govern-
25 ment to act, primarily after the damage is done rather than by pre-
26 vention through seeking the safest alternatives to toxics as they
27 become available;

28 That the current regulatory system for toxic chemicals has particu-
29 larly failed to protect vulnerable populations including the
30 developing fetus and child; people who are vulnerable due to
31 health conditions or genetic predispositions; and low-income com-
32 munities or disadvantaged workers who are overburdened with
33 greater exposure to these toxic substances;

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

42 That the European Union and other countries have already
43 adopted more restrictive policies regarding the use of toxic chemi-
44 cals and more health protective requirements for products, and
45 over 37% of Massachusetts trade is with the European Union's
46 Member States, and;

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

53 That investing in Massachusetts businesses to assist them in
54 developing and instituting safer alternatives will make Massachu-
55 setts a global leader in sustaining an innovative economy based on
56 research, development and production of new materials, products

57 and processes that strengthen our economy while protecting our
58 health and environment;

59 *Therefore*, it is the policy of the Commonwealth to ensure the
60 substitution in the use, manufacture, emission and distribution of
61 each of the priority toxic substances, and in consumer products
62 containing the substances, with the safest feasible alternatives and
63 toward the achievement of that policy the Commonwealth hereby
64 adopts an integrated chemicals strategy to achieve that goal:

65 a) Designating an initial group of priority chemicals to be tar-
66 geted for substitution as safer alternatives are found to be feasible;

67 b) Assessing the uses of those priority chemicals through the
68 Toxics Use Reduction Institute at the University of Massachusetts
69 in Lowell to determine whether there are safer feasible alterna-
70 tives available for those usage categories;

71 c) Where there are uses of the chemicals for which there are
72 no safer feasible alternatives found, instituting further research
73 and development;

74 d) Directing the Executive Office of Environmental Affairs to
75 set priorities for business assistance and regulatory agency action
76 based on a substance's potential health and environmental
77 impacts, on the economic and technical ease of substitution and
78 on the economic benefits of investment in alternatives;

79 e) Giving flexibility to businesses to develop and implement
80 their own measures to choose and implement safer alternatives

81 f) Directing the department of environmental protection to
82 serve as the implementing regulatory agency for safer feasible
83 alternatives;

84 g) Directing the office of technical assistance within the exec-
85 utive office of environmental affairs to coordinate technical assis-
86 tance to businesses in developing safer alternatives and
87 substituting priority toxics, building on existing capacities at the
88 Toxics Use Reduction Institute and office of technical assistance;

89 h) Assessing fees on toxic chemicals to raise funds to create a
90 Business Transition Assistance Program, and to cover regulatory
91 costs.

92 The chemicals strategy envisioned under this act is integrated
93 with and builds upon the programs established under the Massa-
94 chusetts Toxics Use Reduction Act.

1 SECTION 3. Chapter 21I of the General Laws, as appearing in
2 the 2004 Official Edition, is amended by striking section 5.

1 SECTION 4. Chapter 21I of the General Laws is hereby
2 amended to insert the following new sections:

3 Section 24. Definitions for Safer Alternatives Program.

4 For purposes of sections 24 through 37 of this chapter, the
5 following words and phrases shall have the following meanings:

6 “Acceptability criteria” means the hazard criteria set forth in
7 section 4 for evaluating the acceptability of toxic substance alter-
8 natives.

9 “Alternative” or “alternatives” mean activities, technologies,
10 materials or methods of equivalent function, which can be substi-
11 tuted for the use of a particular chemical.

12 “Board” means the Safer Alternatives Oversight Board created
13 by this chapter.

14 “Department” means the department of environmental protec-
15 tion.

16 “Distributor” means any person or legal entity which distributes
17 products to retail establishments on a wholesale basis, and also
18 includes any legal entity which owns retail establishments and
19 distributes such products to more than five retail establishments of
20 its own within the Commonwealth. Distribution or sales include,
21 but are not limited to, transactions conducted through sales out-
22 lets, catalogs or the internet, a product under its own brand or
23 sales of a product by others under their own brand or label.

24 “Environment” means natural physical conditions and systems
25 including land, air, water, minerals, flora, fauna, noise, and
26 ecosystems.

27 “EOEA” means the executive office of environmental affairs.

28 “Feasible” means capable of being accomplished within a rea-
29 sonable period of time with proven technologies.

30 “Further study alternative” means an alternative for which the
31 institute lacks sufficient data to characterize it either as a “safer
32 alternative” or an “unacceptable alternative.”

33 “Impact on existing jobs” means need for employee retraining
34 to do a different job in the same workplace, changes in job
35 descriptions or tasks, changes in working conditions such as
36 health and safety, or reduction in employee wages or hours occur-
37 ring in the Commonwealth of Massachusetts.

38 “Institute” means the toxics use reduction institute at the Uni-
39 versity of Massachusetts Lowell.

40 “Job loss” means the loss of employment within the Common-
41 wealth of Massachusetts.

42 “Just and fair transition” means reemployment assistance or
43 vocational retraining or other support or arrangements sufficient
44 to ensure that any employee displaced in the Commonwealth as a
45 result of toxic substance substitution will be eligible for an avail-
46 able job with at least equivalent wages and benefits, skill level,
47 and working conditions.

48 “Legal entity” means any firm, association, organization, part-
49 nership, business, trust, corporation, limited liability company,
50 company, district, county, city, town, and the state, and any of the
51 agencies and political subdivisions of those entities, joint action
52 agencies, public authorities, and, to the extent permitted by fed-
53 eral law, the United States, or any of its agencies or political sub-
54 divisions.

55 “Manufacturer” means the producer of a product sold or manu-
56 factured in the Commonwealth.

57 “Material substitution” means the direct replacement of one
58 substance for a priority toxic substance in a simple drop-in
59 process, without otherwise changing the formula or process.

60 “Priority toxic substance” means any of the following sub-
61 stances:

62 Lead

63 Formaldehyde

64 Trichloroethylene

65 Perchloroethylene

66 Dioxins and Furans

67 Hexavalent chromium

68 Organophosphate pesticides

69 Polybrominated Diphenyl Ethers

70 di-(2-ethylhexyl)phthalate (DEHP)

71 2,4, Dichlorophenoxyacetic acid (2,4, D)

72 Additional substances shall be designated as priority toxic sub-
73 stances pursuant to section 33 of this chapter.

74 “Proven technologies” means technologies in use by some users
75 within similar firms in a user sector within or outside of the Com-
76 monwealth.

77 “Qualitative basis” means identifying and estimating categories
78 of releases and exposures, without undertaking extensive quantita-
79 tive studies or analysis.

80 “Safer Alternatives Assessment Report” means the alternatives
81 assessment completed for each priority toxic substance by the
82 Toxics Use Reduction Institute.

83 “Safer alternative” means an option or options — including a
84 change in chemical, material, product, process, function, system,
85 or any other action — whose adoption to replace a chemical cur-
86 rently in use would be most effective in reducing overall potential
87 for harm to human health or the environment.

88 “Science Advisory Board” means the science advisory board
89 created by section 6 of this chapter.

90 “Substitution” means the replacement or reduction of hazardous
91 substances by selecting less hazardous or non-hazardous sub-
92 stances, or by changing production processes, product function or
93 design.

94 “Toxic or hazardous substance,” means any chemical substance
95 in a gaseous, liquid or solid state which is identified on the toxic
96 or hazardous substance list established pursuant to section 9 of
97 this chapter, but which will not include any chemical substance
98 when it is (1) present in process water or non-contact cooling
99 water as drawn from the environment or from municipal sources,
100 or present in air used either as compressed air or as part of com-
101 bustion; (2) present in crude, lube or fuel oils or other petroleum
102 materials being held for direct wholesale or retail sale; (3) present
103 as a naturally occurring substance in fossil fuels, and in emissions
104 or byproducts as a result of the combustion of fossil fuels.

105 “Unacceptable alternative,” means an alternative which con-
106 tains, or whose use would result in exposure of humans or wildlife
107 to, a chemical of high concern or other chemical used in dan-
108 gerous and dispersive ways.

109 “Usage” means the presence of a priority toxic substance in
110 manufacturing, products or services delivered or conducted within
111 the Commonwealth.

112 “Usage Category” means the general area of use of a substance
113 — for example in dyes, cleaners, or surfactants, and where appro-
114 priate, may also include a focus on a particular business sector,
115 such as the use of a substance in cleaners used in hospitals, or on a

116 subgroup of users or sectors that are technically and logically
117 related, such as the use of cleaners in buildings occupied by chil-
118 dren.

119 “User sector” means a logical grouping of users of a priority
120 toxic substance within the Commonwealth.

121 Section 25. Chemicals Categorization List

122 (A). Preliminary Chemicals Categorization List. No later than
123 one year following the receipt of funding, the Institute shall pub-
124 lish a Preliminary Chemicals Categorization List for chemicals
125 commonly used in Massachusetts industry and in products sold in
126 Massachusetts. The institute will rely on the Science Advisory
127 Board to categorize chemicals on Preliminary Chemicals Catego-
128 rization List into one of four categories: chemicals of high con-
129 cern, chemicals of concern, chemicals of unknown concern, and
130 chemicals of low concern. In preparing this categorization the
131 Science Advisory Board will rely on published government lists
132 of chemical categorizations such as, but not limited to, the Cana-
133 dian Domestic Substances List Categorization, the European
134 Commission's list of substances of very high concern, Washington
135 State's list of persistent, bioaccumulative and toxic chemicals,
136 International Agency for Research on Cancer's list of carcinogens,
137 the Oslo-Paris Convention for the Protection of the Marine Envi-
138 ronment of the North East Atlantic list of chemicals for priority
139 action. However, the chemicals of high concern category must
140 include those chemicals recognized as carcinogens, mutagens and
141 reproductive toxins; chemicals recognized as persistent, bioaccu-
142 mulative and toxic chemicals; chemicals recognized as very per-
143 sistent and very bioaccumulative chemicals; endocrine disruptors;
144 and other chemicals of equivalent concern. In addition, the chem-
145 icals of high concern category shall include each of the priority
146 toxic substances.

147 (B) Refined Chemicals Categorization List. Following the pub-
148 lication of the Preliminary Chemicals Categorization list, the insti-
149 tute and the Science Advisory Board will continue to review
150 scientific information in regards to chemical positions in the cate-
151 gories. At periodic points, but at least every 4 years, and within 4
152 years after publication of the Preliminary Chemicals Categori-
153 zation List, the institute and the Science Advisory Board shall refine
154 the list to incorporate new scientific information and data, and
155 publish a refined version of the list.

156 Section 26. Safer Alternatives Assessment Reports.

157 (A) Within two years from the passage of this Act, the institute
158 shall conduct and publish for each of the 10 priority toxic sub-
159 stances listed in section 24 a Safer Alternatives Assessment
160 Report which evaluates the availability of safer alternatives to the
161 priority toxic substances for categories of uses within the Com-
162 monwealth

163 For each Safer Alternatives Assessment Report the institute
164 shall:

165 a. Identify the uses and functions of the priority toxic substance
166 and select a subset of uses and functions for further study based
167 on uses in Massachusetts and other relevant factors; priority shall
168 be given to uses of greatest volume or dispersion into indoor and
169 outdoor environments;

170 b. Identify whether alternatives are available for the selected
171 uses and functions of the priority toxic substance.

172 c. Identify whether any of the existing uses of the substance are
173 of a trivial, clearly unnecessary nature;

174 d. Use the Chemical Categorization List in Section 25 and other
175 relevant factors to characterize feasible alternatives as one of the
176 following mutually exclusive categories: unacceptable alterna-
177 tives, further study alternatives, or safer alternatives. Pursuant to
178 Section 24 of this chapter, “unacceptable alternative” means an
179 alternative which contains, or whose use would result in exposure
180 of humans or wildlife to, a chemical of high concern or other
181 chemical used in dangerous and dispersive ways; “further study
182 alternative” means an alternative for which the institute lacks suf-
183 ficient data to characterize it either as a “safer alternative” or an
184 “unacceptable alternative”; “Safer alternative” means an option or
185 options — including a change in chemical, material, product,
186 process, function, system, or any other action — whose adoption
187 to replace a chemical currently in use would be most effective in
188 reducing overall potential for harm to human health or the envi-
189 ronment.

190 e. The institute shall evaluate the economic feasibility of and
191 economic opportunities or costs associated with adopting and
192 implementing any safer alternative. This assessment shall include
193 a qualitative characterization of the economic impacts of substitu-
194 tion on the Massachusetts economy, including any impacts on the

195 workforce or quality of work life, potential costs or benefits to
196 existing business, and the extent of human exposure to the priority
197 toxic substance that could be eliminated through substitution.

198 f. Each assessment shall also identify uses of chemicals that do
199 not currently have a feasible safer alternative available, and make
200 recommendations for promoting research and development of
201 such alternatives.

202 (B) The Institute shall work with the Science Advisory Board
203 to develop criteria for determining what alternatives are unaccept-
204 able alternatives, further study alternatives, or safer alternatives
205 for priority toxic substances.

206 (C) The Institute shall request comments and suggestions of
207 affected businesses, affected workers, the Safer Alternatives Over-
208 sight Board and members of the public in developing each Safer
209 Alternatives Assessment Report. The Institute shall convene sem-
210 inars and public meetings, and solicit comments through the
211 internet and other means to inform the development of the Safer
212 Alternatives Assessment Report for each priority toxic chemical.

213 (D) The Institute shall publish and make available to the
214 EOEa, the department and the general public the results of the
215 Safer Alternatives Assessment Report for each priority toxic sub-
216 stance and compile a general list of alternatives deemed as unac-
217 ceptable, further study, or safer for all of the priority toxic
218 substances.

219 (E) In the event one of the priority toxic substances is a pesti-
220 cide, resources at the University of Massachusetts Amherst,
221 including the Cooperative Extension Service, will complete the
222 agricultural uses portion of the safer alternatives assessment.

223 (F) As additional substances beyond the first 10 priority toxic
224 substances are added to the list of priority toxic substances by the
225 department, the institute shall complete a Safer Alternatives
226 Assessment Report for each. In preparing additional Safer Alter-
227 natives Assessment Reports the institute should strive to complete
228 a minimum of three such reports per year.

229 Section 27. Registry of Uses of Priority Toxic Substances.

230 (A) Notices. No later than 120 days following the effective
231 date of this section, any person or legal entity that manufactures
232 or distributes a product in the Commonwealth which the manufac-
233 turer or distributor knows or has reason to suspect to contain a pri-

234 ority toxic substance shall file a notice with the department identi-
235 fying the product, the approximate number of units distributed in
236 the Commonwealth, an estimate of the amount or concentration of
237 the priority toxic substance contained in each unit, if known, pur-
238 pose for including the priority toxic substance, the name and
239 address of the manufacturer, and the name, address, and phone
240 number of a contact person. The department shall prescribe a noti-
241 fication form for such notices to be filed, and a means of filing
242 such notices electronically.

243 (B) Distribution of information. The notices shall be provided
244 by the department to the institute for use in preparing its Safer
245 Alternatives Assessment Reports, and shall be a public record
246 under section 10 of chapter 66 of the General Laws. Public dis-
247 closure of confidential business information submitted to the
248 department pursuant to this section shall be governed by the
249 requirements of section 10 of chapter 66 of the general laws.
250 Notwithstanding the requirements of the said act, the state may
251 provide the copies of such information, and the department may
252 compile or publish analyses or summaries of such information
253 provided that the analyses or summaries do not identify any man-
254 ufacturer or reveal any confidential information.

255 (C) Preemption. Any product containing a priority toxic sub-
256 stance for which federal law governs notice in a manner that pre-
257 empts state authority shall be exempt from the requirements of
258 this section.

259 (D) With the approval of the department, a manufacturer, dis-
260 tributor or trade group may supply the information required above
261 for a product category rather than an individual product. The sub-
262 mitter shall update and revise the information in the notification
263 whenever there is significant change in the information or when
264 requested by the department. The department may promulgate
265 regulations pursuant to chapter 30A of the General Laws for the
266 content and submission of the required notification.

267 Section 28. Innovative Business Leaders Program. The Execu-
268 tive Office of Environmental Affairs shall create a program to
269 encourage rapid substitution of priority toxic substances, called
270 the “Innovative Business Leaders Program”. This program shall
271 encourage users of priority toxic substances or chemicals of high
272 concern to complete Substitution Plans prior to completion of

273 Safer Alternatives Assessment Reports, as defined in Sections 24
274 and 26 of this chapter, or Chemical Action Plans, as defined in
275 Section 29 of this chapter. Those entities participating in the
276 Innovative Business Leaders Program shall submit the results of
277 Substitution Plans to the department. This program may include:

278 (a) priority targeted financial and technical assistance and sup-
279 port for research, information gathering, and implementation;

280 (b) reduced Toxics Use Reduction planning requirements for
281 firms that file under the Toxics Use Reduction Act;

282 EOEa will develop criteria for firms that participate in said
283 program.

284 Section 29. State Chemical Action Plans.

285 (A) No later than 180 days after the institute issues a Safer
286 Alternatives Assessment Report for a specific priority toxic sub-
287 stance, the EOEa shall utilize the report to establish a Chemical
288 Action Plan for that substance. The goal of the Chemical Action
289 Plan shall be to coordinate state agency activities and to require
290 users of priority toxic substances to act as expeditiously as pos-
291 sible to ensure substitution of the priority toxic substance with a
292 safer alternative, while acting to minimize job loss and mitigate
293 any other potential unintended negative impacts. In preparing the
294 Chemical Action Plan, the EOEa shall consider the potential
295 impacts to human health and the environment of the continued use
296 of the priority toxic substance.

297 (B) Each Chemical Action Plan shall set forth:

298 1) Timetables, schedules and deadlines for achieving substitu-
299 tion of priority toxic chemicals with safer alternatives,

300 2) Requirements for all legal entities using the priority toxic
301 chemical in Massachusetts to create a Substitution Plan which
302 demonstrates how that entity will substitute all uses of the chem-
303 ical with safer alternatives. Firms required to prepare Toxics Use
304 Reduction Plans shall include the Substitution Plan in their Toxics
305 Use Reduction Plan.

306 A Substitution Plan shall include:

307 a) identification of all uses of a priority toxic substances,

308 b) identification of all alternatives considered and their cost
309 and feasibility considerations,

310 c) selection of preferred alternatives that will achieve the
311 objectives and schedules set out in the relevant Chemical Action
312 Plan,

313 d) timetables, schedules and deadlines for implementing the
314 preferred alternatives,

315 e) metrics for measuring and assuring the full substitution of
316 the priority toxic substance.

317 Each completed Substitution Plan must be certified by a Toxics
318 Use Reduction Planner, as defined in Section 12 of Chapter 21I,
319 as complete and reasonable and capable of meeting the objectives
320 and schedules of the relevant Chemical Action Plan.

321 3) Priorities for state agency action based on the Safer Alterna-
322 tives Assessment Report.

323 4) Specific tasks assigned to the department relative to regula-
324 tion deadlines and enforcement regarding business and institu-
325 tional use of toxic chemicals in facilities, and regarding regulation
326 of consumer products containing the priority toxic chemicals.

327 5) A set of implementation measures based on the following
328 criteria:

329 a) If the Safer Alternatives Assessment Report indicates that
330 safer alternatives are feasible and of comparable cost, the depart-
331 ment shall be required to set and enforce deadlines within one
332 year for certifying substitution of safer alternatives as provided by
333 sections 31 and 32 of this chapter.

334 b) If the Safer Alternatives Assessment Report finds that safer
335 alternatives are feasible, but require extensive capital expenditure
336 or training, EOEA shall implement a business assistance or
337 employee transition program, as set forth in Section 30 of this
338 chapter. EOEA will set a timetable for completing substitutions
339 as expeditiously as possible.

340 c) If the Safer Alternatives Assessment Report determines
341 that safer alternatives are not feasible the Chemicals Action Plan
342 shall designate research and development activities to be pursued,
343 including a priority of encouraging and supporting research by
344 private entities; and

345 6) Recommendations on opportunities and needs for investment
346 in Massachusetts businesses and research and development insti-
347 tutions to promote the implementation of safer alternatives to
348 toxic chemicals that could bring the most benefit to the Massachu-
349 setts economy through safe jobs and economic growth.

350 (C) After the EOEA has established a Chemical Action Plan, all
351 other state agencies shall take any required implementing actions
352 as set forth in the Chemicals Action Plans and this chapter.

353 (D) In preparing each Chemical Action Plan, EOEА shall hold
354 public hearings in each of the five regions of the state to receive
355 feedback on the contents of the plan.

356 Section 30. Business and Employee Transitions Programs

357 (A) Business Transitions Assistance Program.

358 The Executive Office of Environmental Affairs shall oversee a
359 Business Transitions Assistance Program (BTAP) facilitating
360 business transitions to safer alternatives to toxic chemicals in the
361 Commonwealth. In developing the program, the EOEА shall
362 determine where business assistance and financial investment can
363 be most effectively used to protect public health by focusing on
364 application and promotion of safer alternatives.

365 The office of technical assistance shall provide technical assis-
366 tance to businesses for developing and implementing safer alter-
367 natives consistent with sections six and seven of this chapter. The
368 Business Transition Assistance Program shall be principally oper-
369 ated through private consortia, public-private partnerships, and
370 state universities. The Business Transitions Assistance Program
371 shall include:

372 1. programs to evaluate technologies, encourage university
373 researchers to pursue projects, link researchers with industry part-
374 ners, and attract funding and additional support through federal
375 and private grant and financial assistance resources;

376 2. direct grants and loans to businesses for costs required to
377 implement safer alternatives

378 3. technical support focused on individual companies or user
379 sectors;

380 4. technical assistance in assessing safer alternatives and
381 assistance with forming consortiums to assess and develop safer
382 alternatives

383 5. research and development of safer alternatives, including
384 demonstration projects;

385 6. market development programs, to create demand for safer
386 alternatives;

387 7. conferences, seminars, and workshops focused on joint
388 problem solving and evaluation of technology development
389 opportunities for particular user sectors;

390 8. publications focused on particular user sectors.

391 The Business Transition Assistance Program shall be developed
392 with assistance and collaboration with the department of labor and
393 industries, department of economic development, the office of
394 technical assistance of the executive office of environmental
395 affairs, department of labor and workforce development, and other
396 agencies.

397 (B) Employee Transitions. The department of labor and work-
398 force development shall cooperate with the EOEA and the depart-
399 ment in developing the employee transition assistance programs.
400 These agencies shall jointly develop a plan to provide that in the
401 event that substantial job losses are anticipated as a result of
402 implementation, just and fair transition services shall ensure reem-
403 ployment assistance or vocational retraining or other support or
404 arrangements sufficient to ensure that any employee displaced in
405 the Commonwealth as a result of toxic substance substitution will
406 be eligible for an available job with at least equivalent wages and
407 benefits, and working conditions.

408 In the event that any employee is terminated after the enact-
409 ment of this law, through no fault of his own, as a result of the
410 transition from priority toxics, and is otherwise eligible for unem-
411 ployment benefits, he or she shall receive reemployment assis-
412 tance benefits and health insurance benefits through the
413 department of labor and workforce development. Such benefits
414 shall be in addition to any benefits any employee may receive pur-
415 suant to the provisions of an agreement resulting from collective
416 bargaining. The just and fair transition services shall include a
417 mechanism for utilizing funds in the Innovation for Safer Alterna-
418 tives Fund established by MGL chapter 29 section 2DDD to cover
419 any expenses generated as a result of this section and shall pro-
420 vide a mechanism for annual accounting of any funds disbursed
421 pursuant to this section.

422 In the event there is projected to be significant job loss in the
423 Commonwealth as a result of the shift to safer alternatives, the
424 department shall establish requirements to ensure a just and fair
425 transition of any affected workers. In the event there would be
426 other substantial impacts on existing jobs, transition plans should
427 also address these issues.

428 Section 31. Implementation — In-state Manufacturers and
429 Users of Priority Toxic Substances.

430 (A) In conformance with the Chemical Action Plan, the depart-
431 ment shall promulgate regulations to establish substitution dead-
432 lines and substitution planning requirements for business or
433 institutional uses for each priority toxic substance. The regula-
434 tions shall specify enforcement mechanisms. The department shall
435 establish de minimis thresholds for substitution requirements that
436 shall ensure that any significant business uses of priority toxic
437 substances are covered by the substitution requirements, even if
438 such businesses or institutions were not previously required to
439 prepare toxics use reduction plans.

440 (B) No later than 90 days prior to any substitution deadline pro-
441 mulgated by the department, each regulated entity shall:

442 1) Have completed a substitution plan as defined in Section 29;
443 and

444 2) File with the department a certification of compliance that a
445 safer alternative as designated by a Safer Alternatives Assessment
446 Report has been implemented, including identification of the
447 name of the alternative, and documentation of employee participa-
448 tion consistent with this section; or

449 3) File an application with the department to use an alternative
450 substance that has neither been designated by the institute as a
451 safer alternative, nor designated unacceptable, documenting that
452 the alternative does not involve chemicals of high concern, and
453 documenting with toxicity and exposure data how the substance
454 would comply with the safer alternatives criteria developed by the
455 institute. In response to such request the department shall eval-
456 uate whether such alternative is acceptable; or

457 4) File with the department an application for a waiver of the
458 substitution deadline, certifying that there is no safer alternative
459 that is technically or economically feasible for their particular use
460 of the substance. Such waiver applications shall include:

461 a) identification of all uses of a priority toxic substances,

462 b) identification of all alternatives considered and their cost and
463 feasibility considerations,

464 c) the basis for finding that there is no feasible safer alternative

465 d) documentation of efforts to be taken to minimize the use of
466 the priority toxic substance and human and environmental expo-
467 sures to such substance until safer alternatives are found and
468 implemented,

469 e) the steps the applicant will take to identify safer alternatives
470 in the coming year.

471 The department shall reject or accept such waiver application
472 within 60 days of receipt of an application, and may grant the
473 waiver where the department finds there is a need for the use of
474 the substance, there was no safer alternative, and the use of the
475 product would not cause human exposure or environmental conta-
476 mination. Waivers are time limited to one year, after which time a
477 new waiver application must be submitted.

478 (C) All regulated entities evaluating the substitution of safer
479 alternatives pursuant to a safer alternatives substitution deadline
480 shall undertake measures to involve employees. At a minimum,
481 each firm shall provide employees a thirty-day period to provide
482 comments. The firm shall maintain documentation of its employee
483 input and how it is utilized, shall solicit employee comments
484 regarding the use of alternatives, allow for anonymous employee
485 comments, and ensure an analysis of the impact the substitution
486 may have on all aspects of the quality of work life.

487 (D) The department and the institute shall cooperate in revising
488 training requirements for toxics use reduction planners to ensure
489 that the planners are prepared to assist in fulfilling the substitution
490 planning requirements of this section. In addition, the department
491 and institute may develop an additional curriculum to enable
492 toxics use reduction planners to aid manufacturers and distributors
493 in fulfilling the requirements of section 32 of this act.

494 Section 32. Implementation — Distributors and Out of State
495 Manufacturers of Products Containing Priority Toxic Substances.

496 The department shall promulgate regulations for distributors
497 and out of state manufacturers to implement the Chemical Action
498 Plan for each priority toxic substance, including:

499 (A) Establishing deadlines for manufacturers and distributors of
500 products containing priority toxic substances to implement the
501 alternatives or otherwise remove the products from the market in
502 the Commonwealth.

503 (B) A requirement that no later than the date of any substitution
504 deadline promulgated by the department, each manufacturer or
505 distributor of a product sold or distributed in the Commonwealth
506 which they know or should know contains such substances shall:

507 1) File with the department a certification that a safer alterna-
508 tive as designated by a Safer Alternatives Assessment Report has
509 been implemented, including identification of the name of the
510 alternative; or

511 2) File an application with the department to use an alternative
512 substance that has neither been designated by the institute as a
513 safer alternative, nor designated unacceptable, documenting that
514 the alternative does not involve chemicals of high concern, and
515 documenting with toxicity and exposure data how the substance
516 would comply with the safer alternatives criteria developed by the
517 institute. In response to such request the department shall evaluate
518 whether such alternative is acceptable; or

519 3) File with the department an application for a waiver of the
520 substitution deadline, certifying that there is no safer alternative
521 that is technically or economically feasible for the user's products.
522 Such waiver application shall include:

523 a) identification of all uses of a priority toxic substances,

524 b) identification of all alternatives considered and their cost and
525 feasibility considerations,

526 c) the basis for finding that there is no feasible safer alternative

527 d) documentation of efforts to be taken to minimize the use of
528 the priority toxic substance and human and environmental expo-
529 sures to such substance until safer alternatives are found and
530 implemented,

531 e) the steps the applicant will take to identify safer alternatives
532 in the coming year.

533 The department shall reject or accept such waiver application
534 within 60 days of receipt of an application, and may grant the
535 waiver where the department finds there is a need for the use of
536 the substance, there was no safer alternative, and the use of the
537 product would not cause human exposure or environmental conta-
538 mination. Waivers are time limited to one year, after which time a
539 new waiver application must be submitted.

540 (C) The department shall publish a set of lists, for use by
541 retailers and members of the public, of (1) all products that have
542 been certified by manufacturers or distributors as containing only
543 those chemicals identified in an Safer Alternatives Assessment
544 Report as safer alternatives, (2) all products that are being sold
545 under a valid waiver and (3) noncomplying products that are pro-
546 hibited for sale in the Commonwealth.

547 (D) The requirements of this section shall apply to manufac-
548 turers and distributors that sell or distribute products to persons or
549 legal entities in the Commonwealth, regardless of whether such
550 manufacturers or distributors are physically located in the Com-
551 monwealth.

552 Section 33. General requirements and authorities.

553 (A) Businesses and legal entities of any size may develop col-
554 laborative submissions to meet any of the certification or waiver
555 application requirements of sections 30 and 31 of this chapter. The
556 executive office of environmental affairs shall assist in facilitating
557 the formation and collaboration of groups of businesses in ful-
558 filling the filing and documentation requirements.

559 (B) Certifications pursuant to section 30 and 31 shall be by
560 independent laboratories known to and approved by the depart-
561 ment.

562 (C) The department shall have all of the powers and authorities
563 necessary to prohibit or limit the use, sale or distribution of a
564 product containing a priority toxic substance in the Common-
565 wealth.

566 (D) A manufacturer or distributor shall have a duty to take back
567 from retailers and consumers, and compensate them for the full
568 price paid, for any products sold after the enactment of this act for
569 which a regulation of the department requires substitution and for
570 which no waiver has been obtained for continued distribution of
571 the product.

572 Section 34. Safer Alternatives Oversight Board.

573 (A) Membership. The Safer Alternatives Oversight Board shall
574 consist of sixteen members appointed no later than ninety days
575 following the effective date of this section by the Secretary of the
576 Executive Office of Environmental Affairs, one of whom shall be
577 nominated by each of the following to represent the nominating
578 organizations: the Massachusetts Public Health Association; the
579 Massachusetts AFL-CIO; the Massachusetts Building Trades
580 Council; Building Trades Employers Association; the Massachu-
581 setts Coalition on Occupational Safety and Health and the Western
582 Massachusetts Coalition on Occupational Safety and Health,
583 jointly; Clean Water Action; Associated Industries of Massachu-
584 setts; Massachusetts Nurses Association; ; the Environmental
585 League of Massachusetts; Massachusetts Breast Cancer Coali-

586 tion; Massachusetts Public Interest Research Group; IUE/CWA
587 Local 201; Small Business Association; the Responsible Business
588 Association, Boston University School of Public Health; and one
589 of whom shall be appointed as an at large representative by the
590 Secretary.

591 Any member shall be eligible for reappointment. In making ini-
592 tial appointments to said committee, the Secretary shall appoint
593 two members for terms of one year, three members for terms of
594 two years, three members for terms of three years, and six mem-
595 bers for a term of four years. Upon the expiration of the term of
596 any such member, his successor shall be appointed for a term of
597 four years. Persons appointed to fill vacancies shall serve for the
598 unexpired term of said vacancy.

599 (B) The chairman of the Board shall be elected by the mem-
600 bers. A member of the Board may be removed by the Secretary,
601 solely for neglect of duty or malfeasance in office. The Office of
602 the Secretary of Environmental Affairs shall be responsible for the
603 administrative operations of the Board.

604 (C) Duties of the Board. The Safer Alternatives Oversight
605 Board will participate, from conceptualization and scoping
606 through drafts and finalization, in the development of each of the
607 institute's Safer Alternatives Assessment Reports, the develop-
608 ment of each of EOEA's Chemical Action Plans and the develop-
609 ment of implementing policies and regulations by the department .
610 The Board's duties include:

611 1. Reviewing and providing comments to the Institute during
612 the preparation of each Safer Alternatives Assessment Report.
613 The institute must seek comments and recommendations from the
614 Board and incorporate these into each report.

615 2. Reviewing and providing comments to EOEA during the
616 preparation of each Chemical Action Plan.. EOEA must seek com-
617 ments and recommendations from the Board and incorporate these
618 into each plan.

619 3. Reviewing and making recommendations to EOEA on the
620 performance of Chemical Action Plans. Every two years EOEA
621 must present a review of performance on the implementation of
622 each Chemical Action Plan to the Board and seek comment and
623 recommendation.

624 4. Providing recommendations of additional priority toxic sub-
625 stances, including persistent bioaccumulative toxics, to the depart-
626 ment.

627 (F) Technical Assistance Grants. For purposes of ensuring
628 public involvement the department shall establish technical assis-
629 tance grants to organizations of consumers and/or workers focused
630 on the impact of changes in specific sectors. Such grants shall
631 assist in meeting the following needs:

632 1) securing full information on technologies and their impacts
633 on workers, consumers and the environment;

634 2) hiring independent technical support regarding technologies,
635 processes, and work organization; and

636 3) paying for training programs to assist affected groups in ana-
637 lyzing the changes.

638 Section 35. Addition of Priority Toxic Substances.

639 Following the development of the Preliminary Chemical Classi-
640 fication List, the Safer Alternatives Oversight Board shall recom-
641 mend the addition of other chemicals of high concern to the list of
642 priority substances. Following receipt of the list of additional pri-
643 ority toxic substances from the Safer Alternatives Oversight
644 Board the department shall expand the list of priority toxic sub-
645 stances to include these chemicals. In addition, the department
646 shall at its own initiative or at the recommendation of the Science
647 Advisory Board or the Toxics Use Reduction Institute add chemi-
648 cals to the list of priority toxic substances including chemicals
649 that are persistent, bioaccumulative and toxic; are other chemicals
650 of high concern; or are chemicals of concern that are widely used
651 within Massachusetts. One year after the institute has published
652 the Refined Chemicals Classification List, the department shall
653 add all chemicals of high concern which are used in Massachu-
654 setts to the list of priority toxic substances.

655 In addition, any group of ten residents of the Commonwealth
656 may petition the department to add new substances to the list of
657 priority toxic substances. Substances shall be added to the list by
658 the department provided that they are found to merit high priority
659 based on the criteria for high concern chemicals described in
660 Section 25A of this chapter. Such a petition shall include the name
661 and address of each petitioner, and a statement of the basis for
662 believing that the named substance should be added to the list of

663 priority toxic substances, and such other information or documen-
664 tation as the petitioner chooses to include.

665 Section 36. Enforcement and Appeals

666 (A) Penalties for Noncompliance. Except as otherwise provided
667 in paragraph B of this section, violations of sections 24 to 39 of
668 this chapter by any person or legal entity, shall subject the violator
669 to penalties of up to \$25,000 per day of violation. In addition, the
670 department shall have the authority to exclude products from the
671 state when a distributor or manufacturer has failed to comply with
672 the provisions of this Act.

673 (B) Exemptions for end users of consumer products. End users
674 of consumer products shall not be subject to enforcement action
675 under paragraph (a) of this section.

676 (C) Petition for Appeal. No later than 60 days following the
677 publication of a final Chemical Action Plan by the EOEa, any ten
678 residents of the Commonwealth may file a petition of appeal of
679 any provisions of the plan with the Secretary of Environmental
680 Affairs. Such a petition may be filed if the petitioners assert that
681 the plan mischaracterizes uses of the priority toxic substance; fails
682 to include feasible alternatives, or mischaracterizes alternatives;
683 fails to result in substitution of the safest available alternatives as
684 expeditiously as possible; fails to adequately address job loss or
685 impacts on existing jobs; or otherwise fails to meet the criteria of
686 this act. A petition of appeal shall state the grounds of objection.
687 The EOEa shall have 60 days from the date of filing to reply
688 with its determination to (a) deny the appeal, or (b) grant the
689 appeal and revise the plan.

690 (D) Citizen enforcement.

691 1) The superior court shall have jurisdiction to enforce the
692 requirements of this chapter in an action brought by any ten resi-
693 dents of the Commonwealth against:

694 (i) any manufacturer, user or distributor alleged to have been be
695 in violation of such requirements; or

696 (ii) an official of the Commonwealth when there is alleged a
697 failure of that official to perform any act or duty under this
698 chapter which is not discretionary with that official.

699 2) No action may be commenced under this section against any
700 manufacturer, user or distributor alleged to have been in violation
701 of the requirements of this chapter prior to twenty one days after

702 the date on which the plaintiff gives notice of the alleged violation
703 to the department and the alleged violator. No action may be com-
704 menced under this subsection against any manufacturer, user or
705 distributor alleged to have been in violation of such requirements
706 if the department has commenced and is diligently pursuing an
707 administrative order or civil action to enforce the requirement
708 concerned and to impose a civil penalty under this chapter with
709 respect to the violation of such requirement. No action may be
710 commenced under this subsection against an official of the Com-
711 monwealth prior to twenty-one days after the date on which the
712 plaintiff gives notice to said official that the plaintiff will com-
713 mence the action. Notice under this subsection shall be given in a
714 manner as the department shall prescribe by regulation.

715 3) The court, in issuing any final order for civil penalties or
716 injunctive relief in any action brought pursuant to this subsection,
717 may award costs of litigation, including reasonable attorney and
718 expert witness fees, to the prevailing or substantially prevailing
719 party other than the Commonwealth who advances the purposes of
720 this chapter.

721 (E) In an action for judicial review, or review of a departmental
722 decision by an administrative law judge, the court shall overturn a
723 decision of the department which is contrary to the Safer Alterna-
724 tives Oversight Board 's recommendations unless it finds based on
725 clear and compelling evidence that the findings or recommenda-
726 tions of the Safer Alternatives Oversight Board were in error.

727 Nothing in this section shall restrict or expand any right that
728 anyone may have under any other federal or state statute or
729 common law to seek enforcement of any requirement or to seek
730 any other relief.

731 Section 37. Scope of Law and Relationship to Existing Law.

732 (A) Relationship to Federal Law. Nothing in this Act shall be
733 construed to require actions which are preempted by federal law.
734 No provision of this Act shall be construed to require the adoption
735 of Occupational Safety and Health standards or the issuance of
736 orders on any Occupational Safety and Health matter on which the
737 federal Occupational Safety and Health Administration has estab-
738 lished a standard.

739 (B) Relationship to Existing laws. Existing environmental,
740 land use, public health and conservation laws and regulations of

741 the Commonwealth shall be interpreted and enforced consistent
742 with this Act. Nothing in this Act shall be interpreted so as to
743 contravene federal law, or the Constitutions of the Commonwealth
744 or of the United States. Nothing in this act shall be construed to
745 convey rights to discharge priority toxic chemicals into the envi-
746 ronment, to cause potential harm to individuals or the environ-
747 ment, or to create a nuisance. Nothing in this Act shall be
748 construed to limit the ability of local government to restrict or
749 prohibit the use or discharge of toxic substances.

750 (C) Severability. The provisions of this Act shall be severable.
751 In the event that any provision of this Act is invalidated by a court
752 of competent jurisdiction, the remaining provisions shall remain
753 in full force and effect.

1 SECTION 5. Fee on toxic substances.

2 The department of environmental protection shall revise its
3 existing fee structure under the Toxics Use Reduction Act to
4 encompass, in addition to current filers, the wholesale sellers or
5 distributors of products or services to retail establishments in the
6 Commonwealth where such products or services utilize or contain
7 priority toxic substances, regardless of whether such wholesale
8 sellers or distributors are located within or outside of the Com-
9 monwealth. Where retail establishments buy products directly
10 from manufacturers, the fee shall be assessed on the manufacturer.
11 The fee shall be set at a level sufficient to raise \$18 million per
12 year. 75% of the fee shall be collected from larger distributors and
13 25% from smaller distributors, based on criteria the department
14 shall establish. In addition the department shall establish a de
15 minimis threshold for products, services and toxic substances
16 below which no fee shall be assessed.

1 SECTION 6. Chapter 29 of the General Laws is amended by
2 adding the following section:

3 Section 2DDD. There shall be established and set up upon the
4 books of the commonwealth, a separate fund to be known as the
5 Innovation for Safer Alternatives Fund. There shall be credited to
6 such fund any amounts collected by the department as fees or
7 penalties pursuant to chapter 21I; any appropriation, grant, gift, or
8 other contribution explicitly made to such fund; and any interest

9 earned on monies within the fund. Amounts credited to such fund
10 shall be used, subject to appropriation, solely for the purposes of
11 carrying out chapter 21I including the Act for a Healthy Massa-
12 chusetts: Safe Alternatives to Toxic Chemicals. Such funds shall
13 be divided with at least six million dollars per year for the execu-
14 tive office of environmental affairs and its office of toxics use
15 reduction assistance and technology, six million dollars per year
16 for the Toxics Use Reduction Institute, two million dollars per
17 year for the department of environmental protection, and four mil-
18 lion dollars for the business transitions assistance program and the
19 employee transition assistance program established by MGL
20 chapter 21I section 28. The EOEa shall annually file a report
21 with the house and senate committees on ways and means
22 detailing the manner of expenditure of appropriations from the
23 fund in the preceding fiscal year.