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:

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SECTION 1. Title. This Act shall be known and may be cited as “An Act for a Healthy Massachusetts: Safer Alternatives to Toxic Chemicals.”

SECTION 2. Legislative findings.
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, more than 80,000 synthetic chemicals have been produced for use in the U.S since World War II, yet very few have ever been adequately tested for their potential impact on our health. The substances have contaminated the air we breathe, the water and food we consume, everyday products, our homes, schools, workplaces-and therefore end up in our bodies; and
Whereas, the Massachusetts Zero Mercury Action Plan of the Executive Office of Environmental Affairs demonstrates how an
action plan can protect public health from a toxic substance through a gradual program of phasing out a hazardous substance and implementing safer alternatives; 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 and
toward the achievement of that policy the Commonwealth hereby
adopts an integrated chemicals strategy to achieve that goal:

a) Designating an initial group of priority chemicals to be tar-
geted for substitution as safer alternatives are found to be feasible;
b) Assessing the uses of those priority chemicals through the
Toxics Use Reduction Institute at the University of Massachusetts
in Lowell to determine whether there are safer feasible alterna-
tives available for those usage categories;
c) Where there are uses of the chemicals for which there are
no safer feasible alternatives found, instituting further research
and development;
d) Directing the Executive Office of Environmental Affairs to
set priorities for business assistance and regulatory agency action
based on a substance’s potential health and environmental
impacts, on the economic and technical ease of substitution and
on the economic benefits of investment in alternatives;
e) Giving flexibility to businesses to develop and implement
their own measures to choose and implement safer alternatives
f) Directing the department of environmental protection to
serve as the implementing regulatory agency for safer feasible
alternatives;
g) Directing the office of technical assistance within the exec-
utive office of environmental affairs to coordinate technical assis-
tance to businesses in developing safer alternatives and
substituting priority toxics, building on existing capacities at the
Toxics Use Reduction Institute and office of technical assistance;
h) Assessing fees on toxic chemicals to raise funds to create a
Business Transition Assistance Program, and to cover regulatory
costs.

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

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

Section 24. Definitions for Safer Alternatives Program.

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

“Acceptability criteria” means the hazard criteria set forth in section 4 for evaluating the acceptability of toxic substance alternatives.

“Alternative” or “alternatives” mean activities, technologies, materials or methods of equivalent function, which can be substituted for the use of a particular chemical.

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

“Department” means the department of environmental protection.

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

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

“EOEA” means the executive office of environmental affairs.

“Feasible” means capable of being accomplished within a reasonable period of time with proven technologies.

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

“Impact on existing jobs” means need for employee retraining to do a different job in the same workplace, changes in job descriptions or tasks, changes in working conditions such as health and safety, or reduction in employee wages or hours occurring in the Commonwealth of Massachusetts.
“Institute” means the toxics use reduction institute at the University of Massachusetts Lowell.

“Job loss” means the loss of employment within the Commonwealth of Massachusetts.

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

“Legal entity” means any firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, county, city, town, and the state, and any of the agencies and political subdivisions of those entities, joint action agencies, public authorities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions.

“Manufacturer” means the producer of a product sold or manufactured in the Commonwealth.

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

“Priority toxic substance” means any of the following substances:

- Lead
- Formaldehyde
- Trichloroethylene
- Perchloroethylene
- Dioxins and Furans
- Hexavalent chromium
- Organophosphate pesticides
- Polybrominated Diphenyl Ethers
- di-(2-ethylhexyl)phthalate (DEHP)
- 2,4, Dichlorophenoxyacetic acid (2,4, D)

Additional substances shall be designated as priority toxic substances pursuant to section 33 of this chapter.

“Proven technologies” means technologies in use by some users within similar firms in a user sector within or outside of the Commonwealth.
“Qualitative basis” means identifying and estimating categories of releases and exposures, without undertaking extensive quantitative studies or analysis.

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

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

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

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

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

“Unacceptable alternative,” means an alternative which contains, or whose use would result in exposure of humans or wildlife to, a chemical of high concern or other chemical used in dangerous and dispersive ways.

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

“Usage Category” means the general area of use of a substance — for example in dyes, cleaners, or surfactants, and where appropriate, may also include a focus on a particular business sector, such as the use of a substance in cleaners used in hospitals, or on a
subgroup of users or sectors that are technically and logically related, such as the use of cleaners in buildings occupied by children.

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

Section 25. Chemicals Categorization List

(A). Preliminary Chemicals Categorization List. No later than one year following the receipt of funding, the Institute shall publish a Preliminary Chemicals Categorization List for chemicals commonly used in Massachusetts industry and in products sold in Massachusetts. The institute will rely on the Science Advisory Board to categorize chemicals on Preliminary Chemicals Categorization List into one of four categories: chemicals of high concern, chemicals of concern, chemicals of unknown concern, and chemicals of low concern. In preparing this categorization the Science Advisory Board will rely on published government lists of chemical categorizations such as, but not limited to, the Canadian Domestic Substances List Categorization, the European Commission’s list of substances of very high concern, Washington State’s list of persistent, bioaccumulative and toxic chemicals, International Agency for Research on Cancer’s list of carcinogens, the Oslo-Paris Convention for the Protection of the Marine Environment of the North East Atlantic list of chemicals for priority action. However, the chemicals of high concern category must include those chemicals recognized as carcinogens, mutagens and reproductive toxins; chemicals recognized as persistent, bioaccumulative and toxic chemicals; chemicals recognized as very persistent and very bioaccumulative chemicals; endocrine disruptors; and other chemicals of equivalent concern. In addition, the chemicals of high concern category shall include each of the priority toxic substances.

(B) Refined Chemicals Categorization List. Following the publication of the Preliminary Chemicals Categorization list, the institute and the Science Advisory Board will continue to review scientific information in regards to chemical positions in the categories. At periodic points, but at least every 4 years, and within 4 years after publication of the Preliminary Chemicals Categorization List, the institute and the Science Advisory Board shall refine the list to incorporate new scientific information and data, and publish a refined version of the list.
Section 26. Safer Alternatives Assessment Reports.

(A) Within two years from the passage of this Act, the institute shall conduct and publish for each of the 10 priority toxic substances listed in section 24 a Safer Alternatives Assessment Report which evaluates the availability of safer alternatives to the priority toxic substances for categories of uses within the Commonwealth.

For each Safer Alternatives Assessment Report the institute shall:

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

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

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

d. Use the Chemical Categorization List in Section 25 and other relevant factors to characterize feasible alternatives as one of the following mutually exclusive categories: unacceptable alternatives, further study alternatives, or safer alternatives. Pursuant to Section 24 of this chapter, “unacceptable alternative” means an alternative which contains, or whose use would result in exposure of humans or wildlife to, a chemical of high concern or other chemical used in dangerous and dispersive ways; “further study alternative” means an alternative for which the institute lacks sufficient data to characterize it either as a “safer alternative” or an “unacceptable alternative”; “Safer alternative” means an option or options — including a change in chemical, material, product, process, function, system, or any other action — whose adoption to replace a chemical currently in use would be most effective in reducing overall potential for harm to human health or the environment.

e. The institute shall evaluate the economic feasibility of and economic opportunities or costs associated with adopting and implementing any safer alternative. This assessment shall include a qualitative characterization of the economic impacts of substitution on the Massachusetts economy, including any impacts on the
workforce or quality of work life, potential costs or benefits to
existing business, and the extent of human exposure to the priority
toxic substance that could be eliminated through substitution.

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

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

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

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

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

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

Section 27. Registry of Uses of Priority Toxic Substances.

(A) Notices. No later than 120 days following the effective
date of this section, any person or legal entity that manufactures
or distributes a product in the Commonwealth which the manufac-
turer or distributor knows or has reason to suspect to contain a pri-
ority toxic substance shall file a notice with the department identifying the product, the approximate number of units distributed in the Commonwealth, an estimate of the amount or concentration of the priority toxic substance contained in each unit, if known, purpose for including the priority toxic substance, the name and address of the manufacturer, and the name, address, and phone number of a contact person. The department shall prescribe a notification form for such notices to be filed, and a means of filing such notices electronically.

(B) Distribution of information. The notices shall be provided by the department to the institute for use in preparing its Safer Alternatives Assessment Reports, and shall be a public record under section 10 of chapter 66 of the General Laws. Public disclosure of confidential business information submitted to the department pursuant to this section shall be governed by the requirements of section 10 of chapter 66 of the general laws. Notwithstanding the requirements of the said act, the state may provide the copies of such information, and the department may compile or publish analyses or summaries of such information provided that the analyses or summaries do not identify any manufacturer or reveal any confidential information.

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

(D) With the approval of the department, a manufacturer, distributor or trade group may supply the information required above for a product category rather than an individual product. The submitter shall update and revise the information in the notification whenever there is significant change in the information or when requested by the department. The department may promulgate regulations pursuant to chapter 30A of the General Laws for the content and submission of the required notification.

Section 28. Innovative Business Leaders Program. The Executive Office of Environmental Affairs shall create a program to encourage rapid substitution of priority toxic substances, called the “Innovative Business Leaders Program”. This program shall encourage users of priority toxic substances or chemicals of high concern to complete Substitution Plans prior to completion of
Safer Alternatives Assessment Reports, as defined in Sections 24 and 26 of this chapter, or Chemical Action Plans, as defined in Section 29 of this chapter. Those entities participating in the Innovative Business Leaders Program shall submit the results of Substitution Plans to the department. This program may include:

(a) priority targeted financial and technical assistance and support for research, information gathering, and implementation;
(b) reduced Toxics Use Reduction planning requirements for firms that file under the Toxics Use Reduction Act;
EOEA will develop criteria for firms that participate in said program.

Section 29. State Chemical Action Plans.

(A) No later than 180 days after the institute issues a Safer Alternatives Assessment Report for a specific priority toxic substance, the EOEA shall utilize the report to establish a Chemical Action Plan for that substance. The goal of the Chemical Action Plan shall be to coordinate state agency activities and to require users of priority toxic substances to act as expeditiously as possible to ensure substitution of the priority toxic substance with a safer alternative, while acting to minimize job loss and mitigate any other potential unintended negative impacts. In preparing the Chemical Action Plan, the EOEA shall consider the potential impacts to human health and the environment of the continued use of the priority toxic substance.

(B) Each Chemical Action Plan shall set forth:
1) Timetables, schedules and deadlines for achieving substitution of priority toxic chemicals with safer alternatives,
2) Requirements for all legal entities using the priority toxic chemical in Massachusetts to create a Substitution Plan which demonstrates how that entity will substitute all uses of the chemical with safer alternatives. Firms required to prepare Toxics Use Reduction Plans shall include the Substitution Plan in their Toxics Use Reduction Plan.

A Substitution Plan shall include:
a) identification of all uses of a priority toxic substances,
b) identification of all alternatives considered and their cost and feasibility considerations,
c) selection of preferred alternatives that will achieve the objectives and schedules set out in the relevant Chemical Action Plan,
d) timetables, schedules and deadlines for implementing the preferred alternatives,
e) metrics for measuring and assuring the full substitution of the priority toxic substance.

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

3) Priorities for state agency action based on the Safer Alternatives Assessment Report.

4) Specific tasks assigned to the department relative to regulation deadlines and enforcement regarding business and institutional use of toxic chemicals in facilities, and regarding regulation of consumer products containing the priority toxic chemicals.

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

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

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

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

   6) Recommendations on opportunities and needs for investment in Massachusetts businesses and research and development institutions to promote the implementation of safer alternatives to toxic chemicals that could bring the most benefit to the Massachusetts economy through safe jobs and economic growth.

   (C) After the EOEA has established a Chemical Action Plan, all other state agencies shall take any required implementing actions as set forth in the Chemicals Action Plans and this chapter.
(D) In preparing each Chemical Action Plan, EOEA shall hold public hearings in each of the five regions of the state to receive feedback on the contents of the plan.

Section 30. Business and Employee Transitions Programs

(A) Business Transitions Assistance Program.

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

The office of technical assistance shall provide technical assistance to businesses for developing and implementing safer alternatives consistent with sections six and seven of this chapter. The Business Transition Assistance Program shall be principally operated through private consortia, public-private partnerships, and state universities. The Business Transitions Assistance Program shall include:

1. programs to evaluate technologies, encourage university researchers to pursue projects, link researchers with industry partners, and attract funding and additional support through federal and private grant and financial assistance resources;
2. direct grants and loans to businesses for costs required to implement safer alternatives
3. technical support focused on individual companies or user sectors;
4. technical assistance in assessing safer alternatives and assistance with forming consortiums to assess and develop safer alternatives
5. research and development of safer alternatives, including demonstration projects;
6. market development programs, to create demand for safer alternatives;
7. conferences, seminars, and workshops focused on joint problem solving and evaluation of technology development opportunities for particular user sectors;
8. publications focused on particular user sectors.
The Business Transition Assistance Program shall be developed with assistance and collaboration with the department of labor and industries, department of economic development, the office of technical assistance of the executive office of environmental affairs, department of labor and workforce development, and other agencies.

(B) Employee Transitions. The department of labor and workforce development shall cooperate with the EOEA and the department in developing the employee transition assistance programs. These agencies shall jointly develop a plan to provide that in the event that substantial job losses are anticipated as a result of implementation, just and fair transition services shall ensure reemployment assistance or vocational retraining or other support or arrangements sufficient to ensure that any employee displaced in the Commonwealth as a result of toxic substance substitution will be eligible for an available job with at least equivalent wages and benefits, and working conditions.

In the event that any employee is terminated after the enactment of this law, through no fault of his own, as a result of the transition from priority toxics, and is otherwise eligible for unemployment benefits, he or she shall receive reemployment assistance benefits and health insurance benefits through the department of labor and workforce development. Such benefits shall be in addition to any benefits any employee may receive pursuant to the provisions of an agreement resulting from collective bargaining. The just and fair transition services shall include a mechanism for utilizing funds in the Innovation for Safer Alternatives Fund established by MGL chapter 29 section 2DDD to cover any expenses generated as a result of this section and shall provide a mechanism for annual accounting of any funds disbursed pursuant to this section.

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

Section 31. Implementation — In-state Manufacturers and Users of Priority Toxic Substances.
(A) In conformance with the Chemical Action Plan, the department shall promulgate regulations to establish substitution deadlines and substitution planning requirements for business or institutional uses for each priority toxic substance. The regulations shall specify enforcement mechanisms. The department shall establish de minimis thresholds for substitution requirements that shall ensure that any significant business uses of priority toxic substances are covered by the substitution requirements, even if such businesses or institutions were not previously required to prepare toxics use reduction plans.

(B) No later than 90 days prior to any substitution deadline promulgated by the department, each regulated entity shall:

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

2) File with the department a certification of compliance that a safer alternative as designated by a Safer Alternatives Assessment Report has been implemented, including identification of the name of the alternative, and documentation of employee participation consistent with this section; or

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

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

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

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

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

   d) documentation of efforts to be taken to minimize the use of the priority toxic substance and human and environmental exposures to such substance until safer alternatives are found and implemented,
e) the steps the applicant will take to identify safer alternatives in the coming year.

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

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

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

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

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

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

(B) A requirement that no later than the date of any substitution deadline promulgated by the department, each manufacturer or distributor of a product sold or distributed in the Commonwealth which they know or should know contains such substances shall:
1) File with the department a certification that a safer alternative as designated by a Safer Alternatives Assessment Report has been implemented, including identification of the name of the alternative; or

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

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

   a) identification of all uses of a priority toxic substances,
   b) identification of all alternatives considered and their cost and feasibility considerations,
   c) the basis for finding that there is no feasible safer alternative
   d) documentation of efforts to be taken to minimize the use of the priority toxic substance and human and environmental exposures to such substance until safer alternatives are found and implemented,
   e) the steps the applicant will take to identify safer alternatives in the coming year.

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

(C) The department shall publish a set of lists, for use by retailers and members of the public, of (1) all products that have been certified by manufacturers or distributors as containing only those chemicals identified in an Safer Alternatives Assessment Report as safer alternatives, (2) all products that are being sold under a valid waiver and (3) noncomplying products that are prohibited for sale in the Commonwealth.
(D) The requirements of this section shall apply to manufacturers and distributors that sell or distribute products to persons or legal entities in the Commonwealth, regardless of whether such manufacturers or distributors are physically located in the Commonwealth.

Section 33. General requirements and authorities.

(A) Businesses and legal entities of any size may develop collaborative submissions to meet any of the certification or waiver application requirements of sections 30 and 31 of this chapter. The executive office of environmental affairs shall assist in facilitating the formation and collaboration of groups of businesses in fulfilling the filing and documentation requirements.

(B) Certifications pursuant to section 30 and 31 shall be by independent laboratories known to and approved by the department.

(C) The department shall have all of the powers and authorities necessary to prohibit or limit the use, sale or distribution of a product containing a priority toxic substance in the Commonwealth.

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

Section 34. Safer Alternatives Oversight Board.

(A) Membership. The Safer Alternatives Oversight Board shall consist of sixteen members appointed no later than ninety days following the effective date of this section by the Secretary of the Executive Office of Environmental Affairs, one of whom shall be nominated by each of the following to represent the nominating organizations: the Massachusetts Public Health Association; the Massachusetts AFL-CIO; the Massachusetts Building Trades Council; Building Trades Employers Association; the Massachusetts Coalition on Occupational Safety and Health and the Western Massachusetts Coalition on Occupational Safety and Health, jointly; Clean Water Action; Associated Industries of Massachusetts; Massachusetts Nurses Association; the Environmental League of Massachusetts; Massachusetts Breast Cancer Coali-
tion; Massachusetts Public Interest Research Group; IUE/CWA
Local 201; Small Business Association; the Responsible Business
Association, Boston University School of Public Health; and one
of whom shall be appointed as an at large representative by the
Secretary.

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

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

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

1. Reviewing and providing comments to the Institute during
the preparation of each Safer Alternatives Assessment Report.

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

3. Reviewing and making recommendations to EOEA on the
performance of Chemical Action Plans. Every two years EOEA
must present a review of performance on the implementation of
each Chemical Action Plan to the Board and seek comment and
recommendation.
4. Providing recommendations of additional priority toxic substances, including persistent bioaccumulative toxics, to the department.

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

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

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

3) paying for training programs to assist affected groups in analyzing the changes.

Section 35. Addition of Priority Toxic Substances.

Following the development of the Preliminary Chemical Classification List, the Safer Alternatives Oversight Board shall recommend the addition of other chemicals of high concern to the list of priority substances. Following receipt of the list of additional priority toxic substances from the Safer Alternatives Oversight Board the department shall expand the list of priority toxic substances to include these chemicals. In addition, the department shall at its own initiative or at the recommendation of the Science Advisory Board or the Toxics Use Reduction Institute add chemicals to the list of priority toxic substances including chemicals that are persistent, bioaccumulative and toxic; are other chemicals of high concern; or are chemicals of concern that are widely used within Massachusetts. One year after the institute has published the Refined Chemicals Classification List, the department shall add all chemicals of high concern which are used in Massachusetts to the list of priority toxic substances.

In addition, any group of ten residents of the Commonwealth may petition the department to add new substances to the list of priority toxic substances. Substances shall be added to the list by the department provided that they are found to merit high priority based on the criteria for high concern chemicals described in Section 25A of this chapter. Such a petition shall include the name and address of each petitioner, and a statement of the basis for believing that the named substance should be added to the list of
priority toxic substances, and such other information or documen-
tation as the petitioner chooses to include.

Section 36. Enforcement and Appeals

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

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

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

(D) Citizen enforcement.

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

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

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

2) No action may be commenced under this section against any
manufacturer, user or distributor alleged to have been in violation
of the requirements of this chapter prior to twenty one days after
the date on which the plaintiff gives notice of the alleged violation
to the department and the alleged violator. No action may be com-
menced under this subsection against any manufacturer, user or
distributor alleged to have been in violation of such requirements
if the department has commenced and is diligently pursuing an
administrative order or civil action to enforce the requirement
concerned and to impose a civil penalty under this chapter with
respect to the violation of such requirement. No action may be
commenced under this subsection against an official of the Com-
monwealth prior to twenty-one days after the date on which the
plaintiff gives notice to said official that the plaintiff will com-
merce the action. Notice under this subsection shall be given in a
manner as the department shall prescribe by regulation.
3) The court, in issuing any final order for civil penalties or
injunctive relief in any action brought pursuant to this subsection,
may award costs of litigation, including reasonable attorney and
expert witness fees, to the prevailing or substantially prevailing
party other than the Commonwealth who advances the purposes of
this chapter.
(E) In an action for judicial review, or review of a departmental
decision by an administrative law judge, the court shall overturn a
decision of the department which is contrary to the Safer Alterna-
tives Oversight Board’s recommendations unless it finds based on
clear and compelling evidence that the findings or recommenda-
tions of the Safer Alternatives Oversight Board were in error.
Nothing in this section shall restrict or expand any right that
anyone may have under any other federal or state statute or
common law to seek enforcement of any requirement or to seek
any other relief.
Section 37. Scope of Law and Relationship to Existing Law.
(A) Relationship to Federal Law. Nothing in this Act shall be
construed to require actions which are preempted by federal law.
No provision of this Act shall be construed to require the adoption
of Occupational Safety and Health standards or the issuance of
orders on any Occupational Safety and Health matter on which the
federal Occupational Safety and Health Administration has estab-
lished a standard.
(B) Relationship to Existing laws. Existing environmental,
land use, public health and conservation laws and regulations of
the Commonwealth shall be interpreted and enforced consistent
with this Act. Nothing in this Act shall be interpreted so as to
contravene federal law, or the Constitutions of the Commonwealth
or of the United States. Nothing in this act shall be construed to
convey rights to discharge priority toxic chemicals into the envi-
ronment, to cause potential harm to individuals or the environ-
ment, or to create a nuisance. Nothing in this Act shall be
construed to limit the ability of local government to restrict or
prohibit the use or discharge of toxic substances.
(C) Severability. The provisions of this Act shall be severable.
In the event that any provision of this Act is invalidated by a court
of competent jurisdiction, the remaining provisions shall remain
in full force and effect.

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

SECTION 6. Chapter 29 of the General Laws is amended by
adding the following section:
Section 2DDD. There shall be established and set up upon the
books of the commonwealth, a separate fund to be known as the
Innovation for Safer Alternatives Fund. There shall be credited to
such fund any amounts collected by the department as fees or
penalties pursuant to chapter 21I; any appropriation, grant, gift, or
other contribution explicitly made to such fund; and any interest
earned on monies within the fund. Amounts credited to such fund shall be used, subject to appropriation, solely for the purposes of carrying out chapter 21I including the Act for a Healthy Massachusetts: Safe Alternatives to Toxic Chemicals. Such funds shall be divided with at least six million dollars per year for the executive office of environmental affairs and its office of toxics use reduction assistance and technology, six million dollars per year for the Toxics Use Reduction Institute, two million dollars per year for the department of environmental protection, and four million dollars for the business transitions assistance program and the employee transition assistance program established by MGL chapter 21I section 28. The EOEA shall annually file a report with the house and senate committees on ways and means detailing the manner of expenditure of appropriations from the fund in the preceding fiscal year.