

# SENATE NO. 558

## **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 as "An Act for a Healthy  
2 Massachusetts: Safer Alternatives to Toxic Chemicals."

3 SECTION 2. Legislative findings.

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

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

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

15           *Whereas*, the Massachusetts Zero Mercury Action Plan of the Executive Office of  
16 Environmental Affairs demonstrates how an action plan can protect public health from a toxic  
17 substance through a gradual program of phasing out a hazardous substance and implementing  
18 safer alternatives; and

19                   *Whereas* the General Court finds that:

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

24                   That the current regulatory system for toxic chemicals has particularly failed to protect  
25 vulnerable populations including the developing fetus and child; people who are vulnerable due to  
26 health conditions or genetic predispositions; and low-income communities or disadvantaged workers  
27 who are overburdened with greater exposure to these toxic substances;

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

33                   That the European Union and other countries have already adopted more restrictive policies  
34 regarding the use of toxic chemicals and more health protective requirements for products, and over  
35 37% of Massachusetts trade is with the European Union's Member States, and;

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

40                   That investing in Massachusetts businesses to assist them in developing and instituting safer  
41 alternatives will make Massachusetts a global leader in sustaining an innovative economy based on

42 research, development and production of new materials, products and processes that strengthen our  
43 economy while protecting our health and environment;

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

- 48 a) Designating an initial group of priority chemicals to be targeted for substitution as safer  
49 alternatives are found to be feasible;
- 50 b) Assessing the uses of those priority chemicals through the Toxics Use Reduction Institute at  
51 the University of Massachusetts in Lowell to determine whether there are safer feasible  
52 alternatives available for those usage categories;
- 53 c) Where there are uses of the chemicals for which there are no safer feasible alternatives found,  
54 instituting further research and development;
- 55 d) Directing the Executive Office of Environmental Affairs to set priorities for business assistance  
56 and regulatory agency action based on a substance's potential health and environmental  
57 impacts, on the economic and technical ease of substitution and on the economic benefits of  
58 investment in alternatives;
- 59 e) Giving flexibility to businesses to develop and implement their own measures to choose and  
60 implement safer alternatives
- 61 f) Directing the department of environmental protection to serve as the implementing regulatory  
62 agency for safer feasible alternatives;
- 63 g) Directing the office of technical assistance within the executive office of environmental affairs  
64 to coordinate technical assistance to businesses in developing safer alternatives and substituting

65 priority toxics, building on existing capacities at the Toxics Use Reduction Institute and office  
66 of technical assistance;

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

69 The chemicals strategy envisioned under this act is integrated with and builds upon the programs  
70 established under the Massachusetts Toxics Use Reduction Act.

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

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

74 Section 24. Definitions for Safer Alternatives Program

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

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

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

81 "Board" means the Safer Alternatives Oversight Board created by this chapter.

82 “Department” means the department of environmental protection.

83 “Distributor” means any person or legal entity which distributes products to retail  
84 establishments on a wholesale basis, and also includes any legal entity which owns retail  
85 establishments and distributes such products to more than five retail establishments of its own within  
86 the Commonwealth. Distribution or sales include, but are not limited to, transactions conducted

87 through sales outlets, catalogs or the internet, a product under its own brand or sales of a product by  
88 others under their own brand or label.

89 "Environment" means natural physical conditions and systems including land, air, water,  
90 minerals, flora, fauna, noise, and ecosystems.

91 "EOEA" means the executive office of environmental affairs.

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

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

96 "Impact on existing jobs" means need for employee retraining to do a different job in the same  
97 workplace, changes in job descriptions or tasks, changes in working conditions such as health and  
98 safety, or reduction in employee wages or hours occurring in the Commonwealth of Massachusetts.

99 "Institute" means the toxics use reduction institute at the University of Massachusetts Lowell.

100 "Job loss" means the loss of employment within the Commonwealth of Massachusetts.

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

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

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

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

113 "Priority toxic substance" means any of the following substances:

114 Lead

115 Formaldehyde

116 Trichloroethylene

117 Perchloroethylene

118 Dioxins and Furans

119 Hexavalent chromium

120 Organophosphate pesticides

121 Polybrominated Diphenyl Ethers

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

123 2,4, Dichlorophenoxyacetic acid (2,4, D)

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

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

128 "Qualitative basis" means identifying and estimating categories of releases and exposures,  
129 without undertaking extensive quantitative studies or analysis.

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

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

136 "Science Advisory Board" means the science advisory board created by section 6 of this  
137 chapter.

138 "Substitution" means the replacement or reduction of hazardous substances by selecting less  
139 hazardous or non-hazardous substances, or by changing production processes, product function or  
140 design.

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

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

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

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

158 "User sector" means a logical grouping of users of a priority toxic substance within the  
159 Commonwealth.

#### 160 Section 25. Chemicals Categorization List

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

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

183 Section 26. Safer Alternatives Assessment Reports.

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

188 For each Safer Alternatives Assessment Report the institute shall:

- 189 a. Identify the uses and functions of the priority toxic substance and select a subset of uses and  
190 functions for further study based on uses in Massachusetts and other relevant factors; priority shall be  
191 given to uses of greatest volume or dispersion into indoor and outdoor environments;
- 192 b. Identify whether alternatives are available for the selected uses and functions of the priority toxic  
193 substance.
- 194 c. Identify whether any of the existing uses of the substance are of a trivial, clearly unnecessary nature;
- 195 d. Use the Chemical Categorization List in Section 25 and other relevant factors to characterize  
196 feasible alternatives as one of the following mutually exclusive categories: unacceptable alternatives,  
197 further study alternatives, or safer alternatives. Pursuant to Section 21 of this chapter, “unacceptable  
198 alternative” means an alternative which contains, or whose use would result in exposure of humans or  
199 wildlife to, a chemical of high concern or other chemical used in dangerous and dispersive ways;

200 “further study alternative” means an alternative for which the institute lacks sufficient data to  
201 characterize it either as a “safer alternative” or an “unacceptable alternative”; “Safer alternative”  
202 means an option or options – including a change in chemical, material, product, process, function,  
203 system, or any other action -- whose adoption to replace a chemical currently in use would be most  
204 effective in reducing overall potential for harm to human health or the environment.

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

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

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

217 (C) The Institute shall request comments and suggestions of affected businesses, affected workers,  
218 the Safer Alternatives Oversight Board and members of the public in developing each Safer  
219 Alternatives Assessment Report. The Institute shall convene seminars and public meetings, and  
220 solicit comments through the internet and other means to inform the development of the Safer  
221 Alternatives Assessment Report for each priority toxic chemical.

222 (D) The Institute shall publish and make available to the EOEA, the department and the general

223 public the results of the Safer Alternatives Assessment Report for each priority toxic substance and  
224 compile a general list of alternatives deemed as unacceptable, further study, or safer for all of the  
225 priority toxic substances.

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

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

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

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

243 (B) Distribution of information. The notices shall be provided by the department to the institute for use  
244 in preparing its Safer Alternatives Assessment Reports, and shall be a public record under section 10  
245 of chapter 66 of the General Laws. Public disclosure of confidential business information submitted to

246 the department pursuant to this section shall be governed by the requirements of section 10 of chapter  
247 66 of the general laws. Notwithstanding the requirements of the said act, the state may provide the  
248 copies of such information, and the department may compile or publish analyses or summaries of such  
249 information provided that the analyses or summaries do not identify any manufacturer or reveal any  
250 confidential information.

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

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

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

266 (a) priority targeted financial and technical assistance and support for research, information  
267 gathering, and implementation;

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

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

271 Section 29. State Chemical Action Plans.

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

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

- 281 1) Timetables, schedules and deadlines for achieving substitution of priority toxic chemicals with  
282 safer alternatives,
- 283 2) Requirements for all legal entities using the priority toxic chemical in Massachusetts to create a  
284 Substitution Plan which demonstrates how that entity will substitute all uses of the chemical with  
285 safer alternatives. Firms required to prepare Toxics Use Reduction Plans shall include the  
286 Substitution Plan in their Toxics Use Reduction Plan.

287 A Substitution Plan shall include:

- 288 a) identification of all uses of a priority toxic substances,
- 289 b) identification of all alternatives considered and their cost and feasibility considerations,

- 290 c) selection of preferred alternatives that will achieve the objectives and schedules set out in  
291 the relevant Chemical Action Plan,  
292 d) timetables, schedules and deadlines for implementing the preferred alternatives,  
293 e) metrics for measuring and assuring the full substitution of the priority toxic substance.

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

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

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

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

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

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

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

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

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

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

## 320 Section 30. Business and Employee Transitions Programs

321 (A) Business Transitions Assistance Program.

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

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

- 331 1. programs to evaluate technologies, encourage university researchers to pursue projects,  
332 link researchers with industry partners, and attract funding and additional support through  
333 federal and private grant and financial assistance resources;
- 334 2. direct grants and loans to businesses for costs required to implement safer alternatives

- 335 3. technical support focused on individual companies or user sectors;
- 336 4. technical assistance in assessing safer alternatives and assistance with forming  
337 consortiums to assess and develop safer alternatives
- 338 5. research and development of safer alternatives, including demonstration projects;
- 339 6. market development programs, to create demand for safer alternatives;
- 340 7. conferences, seminars, and workshops focused on joint problem solving and evaluation  
341 of technology development opportunities for particular user sectors;
- 342 8. publications focused on particular user sectors.

343 The Business Transition Assistance Program shall be developed with assistance and collaboration  
344 with the department of labor and industries, department of economic development, the office of  
345 technical assistance of the executive office of environmental affairs, department of labor and  
346 workforce development, and other agencies.

347 (B) Employee Transitions. The department of labor and workforce development shall cooperate  
348 with the EOEI and the department in developing the employee transition assistance programs.

349 These agencies shall jointly develop a plan to provide that in the event that substantial job losses are  
350 anticipated as a result of implementation, just and fair transition services shall ensure reemployment  
351 assistance or vocational retraining or other support or arrangements sufficient to ensure that any  
352 employee displaced in the Commonwealth as a result of toxic substance substitution will be eligible  
353 for an available job with at least equivalent wages and benefits, and working conditions.

354 In the event that any employee is terminated after the enactment of this law, through no fault of his  
355 own, as a result of the transition from priority toxics, and is otherwise eligible for unemployment  
356 benefits, he or she shall receive reemployment assistance benefits and health insurance benefits  
357 through the department of labor and workforce development. Such benefits shall be in addition to

358 any benefits any employee may receive pursuant to the provisions of an agreement resulting from  
359 collective bargaining. The just and fair transition services shall include a mechanism for utilizing  
360 funds in the Innovation for Safer Alternatives Fund established by MGL chapter 29 section 2DDD to  
361 cover any expenses generated as a result of this section and shall provide a mechanism for annual  
362 accounting of any funds disbursed pursuant to this section.

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

367 Section 31. Implementation – In-state Manufacturers and Users of Priority Toxic Substances.

368 (A) In conformance with the Chemical Action Plan, the department shall promulgate regulations to  
369 establish substitution deadlines and substitution planning requirements for business or institutional  
370 uses for each priority toxic substance. The regulations shall specify enforcement mechanisms. The  
371 department shall establish de minimis thresholds for substitution requirements that shall ensure that  
372 any significant business uses of priority toxic substances are covered by the substitution  
373 requirements, even if such businesses or institutions were not previously required to prepare toxics  
374 use reduction plans.

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

- 377 1) Have completed a substitution plan as defined in Section 29; and
- 378 2) File with the department a certification of compliance that a safer alternative as designated by a  
379 Safer Alternatives Assessment Report has been implemented, including identification of the name of  
380 the alternative, and documentation of employee participation consistent with this section; or

381 3) File an application with the department to use an alternative substance that has neither been  
382 designated by the institute as a safer alternative, nor designated unacceptable, documenting that the  
383 alternative does not involve chemicals of high concern, and documenting with toxicity and exposure  
384 data how the substance would comply with the safer alternatives criteria developed by the institute.

385 In response to such request the department shall evaluate whether such alternative is acceptable; or

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

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

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

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

392 d) documentation of efforts to be taken to minimize the use of the priority toxic substance and  
393 human and environmental exposures to such substance until safer alternatives are found and  
394 implemented,

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

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

401 (C) All regulated entities evaluating the substitution of safer alternatives pursuant to a safer  
402 alternatives substitution deadline shall undertake measures to involve employees. At a minimum,  
403 each firm shall provide employees a thirty-day period to provide comments. The firm shall maintain

404 documentation of its employee input and how it is utilized, shall solicit employee comments  
405 regarding the use of alternatives, allow for anonymous employee comments, and ensure an analysis  
406 of the impact the substitution may have on all aspects of the quality of work life.

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

412 Section 32. Implementation – Distributors and Out of State Manufacturers of Products Containing  
413 Priority Toxic Substances.

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

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

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

422 1) File with the department a certification that a safer alternative as designated by a Safer  
423 Alternatives Assessment Report has been implemented, including identification of the name of the  
424 alternative; or

425 2) File an application with the department to use an alternative substance that has neither been  
426 designated by the institute as a safer alternative, nor designated unacceptable, documenting that the

427 alternative does not involve chemicals of high concern, and documenting with toxicity and exposure  
428 data how the substance would comply with the safer alternatives criteria developed by the institute.  
429 In response to such request the department shall evaluate whether such alternative is acceptable; or  
430 3) File with the department an application for a waiver of the substitution deadline, certifying that  
431 there is no safer alternative that is technically or economically feasible for the user's products. Such  
432 waiver application shall include:

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

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

445 (C) The department shall publish a set of lists, for use by retailers and members of the public, of (1)  
446 all products that have been certified by manufacturers or distributors as containing only those  
447 chemicals identified in an Safer Alternatives Assessment Report as safer alternatives, (2) all products  
448 that are being sold under a valid waiver and (3) noncomplying products that are prohibited for sale in  
449 the Commonwealth.

450 (D) The requirements of this section shall apply to manufacturers and distributors that sell or  
451 distribute products to persons or legal entities in the Commonwealth, regardless of whether such  
452 manufacturers or distributors are physically located in the Commonwealth.

453 Section 33. General requirements and authorities.

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

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

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

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

466 Section 34. Safer Alternatives Oversight Board.

467 (A) Membership. The Safer Alternatives Oversight Board shall consist of sixteen members  
468 appointed no later than ninety days following the effective date of this section by the Secretary of the  
469 Executive Office of Environmental Affairs, one of whom shall be nominated by each of the  
470 following to represent the nominating organizations: the Massachusetts Public Health Association;  
471 the Massachusetts AFL-CIO; the Massachusetts Building Trades Council; Building Trades  
472 Employers Association; the Massachusetts Coalition on Occupational Safety and Health and the

473 Western Massachusetts Coalition on Occupational Safety and Health, jointly; Clean Water Action;  
474 Associated Industries of Massachusetts; Massachusetts Nurses Association; ; the Environmental  
475 League of Massachusetts; Massachusetts Breast Cancer Coalition; Massachusetts Public Interest  
476 Research Group; IUE/CWA Local 201; Small Business Association; the Responsible Business  
477 Association, Boston University School of Public Health; and one of whom shall be appointed as an  
478 at large representative by the Secretary.

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

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

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

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

495 2. Reviewing and providing comments to EOEА during the preparation of each Chemical Action  
496 Plan.. EOEА must seek comments and recommendations from the Board and incorporate these into  
497 each plan.

498 3. Reviewing and making recommendations to EOEА on the performance of Chemical Action  
499 Plans. Every two years EOEА must present a review of performance on the implementation of each  
500 Chemical Action Plan to the Board and seek comment and recommendation.

501 4. Providing recommendations of additional priority toxic substances, including persistent  
502 bioaccumulative toxics, to the department.

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

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

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

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

511 Section 35. Addition of Priority Toxic Substances.

512 Following the development of the Preliminary Chemical Classification List, the Safer Alternatives  
513 Oversight Board shall recommend the addition of other chemicals of high concern to the list of

514 priority substances. Following receipt of the list of additional priority toxic substances from the

515 Safer Alternatives Oversight Board the department shall expand the list of priority toxic substances

516 to include these chemicals. In addition, the department shall at its own initiative or at the

517 recommendation of the Science Advisory Board or the Toxics Use Reduction Institute add chemicals

518 to the list of priority toxic substances including chemicals that are persistent, bioaccumulative and  
519 toxic; are other chemicals of high concern; or are chemicals of concern that are widely used within  
520 Massachusetts. One year after the institute has published the Refined Chemicals Classification List,  
521 the department shall add all chemicals of high concern which are used in Massachusetts to the list of  
522 priority toxic substances.

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

#### 530 Section 36. Enforcement and Appeals

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

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

538 (C) Petition for Appeal. No later than 60 days following the publication of a final Chemical Action  
539 Plan by the EOEA, any ten residents of the Commonwealth may file a petition of appeal of any  
540 provisions of the plan with the Secretary of Environmental Affairs. Such a petition may be filed if

541 the petitioners assert that the plan mischaracterizes uses of the priority toxic substance; fails to  
542 include feasible alternatives, or mischaracterizes alternatives; fails to result in substitution of the  
543 safest available alternatives as expeditiously as possible; fails to adequately address job loss or  
544 impacts on existing jobs; or otherwise fails to meet the criteria of this act. A petition of appeal shall  
545 state the grounds of objection. The EOEPA shall have 60 days from the date of filing to reply with its  
546 determination to (a) deny the appeal, or (b) grant the appeal and revise the plan.

547 (D) Citizen enforcement.

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

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

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

553 2) No action may be commenced under this section against any manufacturer, user or distributor  
554 alleged to have been in violation of the requirements of this chapter prior to twenty one days after the  
555 date on which the plaintiff gives notice of the alleged violation to the department and the alleged  
556 violator. No action may be commenced under this subsection against any manufacturer, user or  
557 distributor alleged to have been in violation of such requirements if the department has commenced  
558 and is diligently pursuing an administrative order or civil action to enforce the requirement concerned  
559 and to impose a civil penalty under this chapter with respect to the violation of such requirement. No  
560 action may be commenced under this subsection against an official of the Commonwealth prior to  
561 twenty-one days after the date on which the plaintiff gives notice to said official that the plaintiff will  
562 commence the action. Notice under this subsection shall be given in a manner as the department shall  
563 prescribe by regulation.

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

568 (E) In an action for judicial review, or review of a departmental decision by an administrative law  
569 judge, the court shall overturn a decision of the department which is contrary to the Safer Alternatives  
570 Oversight Board 's recommendations unless it finds based on clear and compelling evidence that the  
571 findings or recommendations of the Safer Alternatives Oversight Board were in error.

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

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

576 (A) Relationship to Federal Law. Nothing in this Act shall be construed to require actions which are  
577 preempted by federal law. No provision of this Act shall be construed to require the adoption of  
578 Occupational Safety and Health standards or the issuance of orders on any Occupational Safety and  
579 Health matter on which the federal Occupational Safety and Health Administration has established a  
580 standard.

581 (B) Relationship to Existing laws. Existing environmental, land use, public health and conservation  
582 laws and regulations of the Commonwealth shall be interpreted and enforced consistent with this  
583 Act. Nothing in this Act shall be interpreted so as to contravene federal law, or the Constitutions of  
584 the Commonwealth or of the United States. Nothing in this act shall be construed to convey rights to  
585 discharge priority toxic chemicals into the environment, to cause potential harm to individuals or the

586 environment, or to create a nuisance. Nothing in this Act shall be construed to limit the ability of  
587 local government to restrict or prohibit the use or discharge of toxic substances.

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

591 SECTION 5. Fee on toxic substances.

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

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

603 Section 2DDD. There shall be established and set up upon the books of the commonwealth, a  
604 separate fund to be known as the Innovation for Safer Alternatives Fund. There shall be credited to  
605 such fund any amounts collected by the department as fees or penalties pursuant to chapter 21I; any  
606 appropriation, grant, gift, or other contribution explicitly made to such fund; and any interest earned  
607 on monies within the fund. Amounts credited to such fund shall be used, subject to appropriation,  
608 solely for the purposes of carrying out chapter 21I including the Act for a Healthy Massachusetts:

609 Safe Alternatives to Toxic Chemicals. Such funds shall be divided with at least six million dollars  
610 per year for the executive office of environmental affairs and its office of toxics use reduction  
611 assistance and technology, six million dollars per year for the Toxics Use Reduction Institute, two  
612 million dollars per year for the department of environmental protection, and four million dollars for  
613 the business transitions assistance program and the employee transition assistance program  
614 established by MGL chapter 21I section 28. The EOEA shall annually file a report with the house  
615 and senate committees on ways and means detailing the manner of expenditure of appropriations  
616 from the fund in the preceding fiscal year.