HOUSE DOCKET, NO. 1010 FILED ON: 1/19/2011

HOUSE . . . . . No. 1136

The Commonwealth of Massachusetts

PRESENTED BY:

Jay R. Kaufman

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act for a competitive economy through safer alternatives to toxic chemicals.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Jay R. Kaufman	*15th Middlesex*	*1/21/2011*
Jennifer E. Benson	*37th Middlesex*	*1/19/2011*
Brian M. Ashe	*2nd Hampden*	*2/4/2011*
Walter F. Timilty	*7th Norfolk*	*2/4/2011*
Elizabeth A. Poirier	*14th Bristol*	*2/4/2011*
Carolyn C. Dykema	*8th Middlesex*	*2/4/2011*
Denise C. Garlick	*13th Norfolk*	*2/4/2011*
Ann-Margaret Ferrante	*5th Essex*	*2/3/2011*
Aaron Michlewitz	*3rd Suffolk*	*2/3/2011*
Alice K. Wolf	*25th Middlesex*	*1/20/2011*
Frank I. Smizik	*15th Norfolk*	*1/20/2011*
William N. Brownsberger		*1/21/2011*
Paul J. Donato	*35th Middlesex*	*1/24/2011*
Martha M. Walz	*8th Suffolk*	*1/25/2011*
John P. Fresolo	*16th Worcester*	*1/26/2011*
Theodore C. Speliotis	*13th Essex*	*1/26/2011*
Lori A. Ehrlich	*8th Essex*	*1/26/2011*
James J. Dwyer	*30th Middlesex*	*1/26/2011*

Ruth B. Balser	*12th Middlesex*	*1/27/2011*
Tom Sannicandro	*7th Middlesex*	*1/26/2011*
Elizabeth A. Malia	*11th Suffolk*	*1/28/2011*
Jason M. Lewis	*31st Middlesex*	*1/28/2011*
James J. O'Day	*14th Worcester*	*1/28/2011*
Sarah K. Peake	*4th Barnstable*	*1/28/2011*
Jonathan Hecht	*29th Middlesex*	*2/3/2011*
James B. Eldridge		*2/2/2011*
F. Jay Barrows	*1st Bristol*	*2/3/2011*
Michael D. Brady	*9th Plymouth*	*2/2/2011*
Denise Provost	*27th Middlesex*	*2/2/2011*
Sean Garballey	*23rd Middlesex*	*2/1/2011*
Carlo Basile	*1st Suffolk*	*2/3/2011*
Cheryl A. Coakley-Rivera	*10th Hampden*	*2/3/2011*
Thomas P. Conroy	*13th Middlesex*	*1/31/2011*
Stephen Kulik	*1st Franklin*	*2/1/2011*
Byron Rushing	*9th Suffolk*	*2/3/2011*
Timothy J. Toomey, Jr.	*26th Middlesex*	*2/2/2011*
Cory Atkins	*14th Middlesex*	*2/3/2011*
Louis L. Kafka	*8th Norfolk*	*2/4/2011*
Alice Hanlon Peisch	*14th Norfolk*	*2/4/2011*
David Paul Linsky	*5th Middlesex*	*2/4/2011*
Antonio F. D. Cabral	*13th Bristol*	*2/3/2011*
John J. Mahoney	*13th Worcester*	*2/3/2011*
Kay Khan	*11th Middlesex*	*2/4/2011*
Benjamin Swan	*11th Hampden*	*2/4/2011*
Linda Dorcena Forry	*12th Suffolk*	*2/4/2011*
Christine E. Canavan	*10th Plymouth*	*2/4/2011*
Carl M. Sciortino, Jr.	*34th Middlesex*	*2/4/2011*
Geraldine M. Creedon	*11th Plymouth*	*2/4/2011*
Cleon H. Turner	*1st Barnstable*	*2/4/2011*
Ellen Story	*3rd Hampshire*	*2/4/2011*
Thomas A. Golden, Jr.	*16th Middlesex*	*2/4/2011*
Martin J. Walsh	*13th Suffolk*	*2/4/2011*

HOUSE DOCKET, NO. 1010 FILED ON: 1/19/2011

HOUSE . . . . . No. 1136

By Mr. Kaufman of Lexington, a petition (accompanied by bill, House, No. 1136) of Jay Kaufman and others for legislation to promote safe alternatives to toxic chemicals. Environment, Natural Resources and Agriculture.

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

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act for a competitive economy through safer alternatives to toxic chemicals.

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

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

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

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

10 Whereas the General Court finds that:

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

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

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

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

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

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

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

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

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

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

46 SECTION 4. Section 3 of said chapter 21I, as so appearing, is hereby amended, in line
47 61, by inserting after the word "reduction" the following words:- ", substitution of safer
48 alternatives."

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

51 (J) The institute shall establish a technical assistance grant program to assist
52 organizations of consumers or workers focused on the impact of substitutions of safer

53 alternatives in specific products, sectors, or uses. The grants may provide assistance for
54 activities that may include but are not limited to securing information on chemical substances
55 and their impact on workers, consumers and the environment; hiring independent technical
56 support regarding chemical substances, production processes and work organization; and paying
57 for training programs to assist affected groups in analyzing the changes.

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

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

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

71 Section 6A.

72 (a) In addition to any other requirements of this chapter, the institute shall seek to
73 reduce the presence of priority chemical substances in consumer products and the workplace by
74 promoting safer alternatives to such substances. The institute may develop recognition programs

75 to promote the priority chemical substance reduction achievements of industry and communities.
76 The institute may establish fees for its safer alternatives programs. When feasible, the institute
77 shall coordinate the programs and responsibilities relative to the substitution of safer alternatives
78 for priority chemical substances with its other programs and responsibilities described in this
79 chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

134 (1) direct grants and loans to businesses for costs required to implement safer
135 alternatives;

136 (2) technical support focused on individual companies or user sectors;

137 (3) technical assistance in assessing safer alternatives and assistance with forming
138 consortiums to assess and develop safer alternatives;

139 (4) market development programs, to create demand for safer alternatives;

140 (5) seminars and workshops to assist businesses in adopting safer substitutes; and

141 (6) publications focused on particular user sectors.

142 The ABC Fund shall be developed with assistance from and collaboration with the
143 department of labor and industries, the department of economic development, the office, the
144 department of labor and workforce development, and the institute.

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

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

152 Section 24. Safer Alternatives Definitions

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

155 “Alternative”, a chemical substance, material, product, process, function, system, or other
156 action of equivalent function which can be substituted for the use of a particular chemical
157 substance.

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

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

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

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

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

174 “Consumer product”, any item or formulation sold for residential or commercial use,
175 including any component, part or packaging, provided that consumer product shall not mean

176 items made available for use in Massachusetts for the sole purpose of redistribution, sale, supply,
177 or lease for use outside of Massachusetts.

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

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

190 Safer Alternative", an alternative, including a change in chemical substance, material,
191 product, process, function, system or other action, that replaces a chemical substance currently in
192 use and that would be effective in reducing the chemical substance's harm to human health or the
193 environment without causing equivalent or greater harm to workers, consumers or the
194 environment.

195 "Substitute", to replace a chemical substance by using a safer alternative.

196 "Substitution", the replacement of a chemical substance through the use of a safer
197 alternative.

198 “User of a priority chemical substance” or “users of a priority chemical substance”,
199 means a person who owns or operates a facility or business that manufactures, processes, or
200 otherwise uses a priority chemical substance for non-residential purposes in the Commonwealth,
201 provided that this definition shall not apply to an article containing a priority chemical substance.

202 Section 25. Designation and Assessment of Priority Chemical Substances

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

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

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

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

214 (i). In designating priority chemical substances, the council shall prioritize substances
215 that adversely impact human health and/or the environment with highest priority given to
216 preventing adverse impacts on children, infants, developing fetuses, and workers, and other
217 vulnerable populations. In designating priority chemical substances the council may consider
218 opportunities that strengthen the Commonwealth’s economy.

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

222 (c) No consumer product containing a priority chemical substance shall be sold, offered
223 for sale, or distributed for use in the Commonwealth unless the product's manufacturer has
224 submitted notification to the institute and the department in accordance with section 25(d). No
225 priority chemical substance shall be used within the Commonwealth unless the user of a priority
226 chemical substance has submitted notification to the institute and the department in accordance
227 with section 25(d).

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

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

240 (ii) Users of a priority chemical substance shall file notice with the institute and the
241 department identifying the name and address of each facility where the priority chemical
242 substance is manufactured, processed, or otherwise used, the mass of each priority chemical
243 substance manufactured, processed, or otherwise used, the purpose for using the priority
244 chemical substance, and the name, address, and phone number of a contact person, and other
245 relevant information the department may require. The user of a priority chemical substance shall
246 update and revise the notification whenever there is a significant change in the information or
247 when requested by the department. Large quantity toxics users and other toxics users within a
248 designated priority user segments already subject to reporting on a priority chemical substance
249 under section 10 shall be exempt from the requirements of this section for that priority chemical
250 substance.

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

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

255 (v) Distribution of information:

256 i. Public disclosure of confidential business information submitted to the institute
257 and the department pursuant to subsection (d) shall be governed by the requirements of section
258 10 of chapter 66.

259 ii. Manufacturers of a consumer product containing a priority chemical substance
260 shall provide notice to any person who sells, offers to sell, or distributes such product for use in
261 the Commonwealth, identifying the priority chemical substance, its purpose in the consumer

262 product, any measures that should be undertaken to reduce a user's exposure to the priority
263 chemical substance, and proper management for discarding the consumer product safely at the
264 end of its useful life. Any person who sells, offers to sell, or distributes such a consumer
265 product for use in the commonwealth shall provide such notice to all purchasers of the product.

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

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

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

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

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

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

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

285 (v). provide a qualitative discussion of the economic viability, opportunities and costs
286 associated with adopting and implementing any safer alternatives. Such discussion may include a
287 qualitative characterization of the economic impacts and benefits of substitution, the extent of
288 human exposure to the priority chemical substance that could be eliminated through substitution
289 or other actions and potential public health benefits or reductions in health care costs;

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

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

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

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

300 (x). periodically review the safer alternative assessment report and its findings with
301 the advisory committee and the council and revise such report as necessary to update it and to
302 address new recommendations. Revised reports shall be made available to the public for

303 comment, and final revised reports shall be published. Such periodic reviews shall be conducted
304 no less frequently than once every five years.

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

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

312 Section 26. Designation of Priority Chemical Substance Uses

313 (a) The institute shall present each completed safer alternatives assessment report to
314 the council. The council shall use the completed report to identify uses of the priority chemical
315 substance that pose a significant hazard to human health or the environment, with highest
316 priority given to uses that adversely impact children, infants, developing fetuses, and workers,
317 and other vulnerable populations. In identifying such uses of the priority chemical substance, the
318 council shall consider both uses of the priority chemical substance itself as well as uses of
319 consumer products that contain the priority chemical substance. The council shall designate any
320 such uses as priority chemical substance uses.

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

325 Section 27. Chemical Action Plans

326 (a) Not later than eighteen months after the council identifies priority chemical
327 substance uses, the department, in consultation with the institute, the office, the advisory
328 committee, and other agencies as appropriate, shall prepare a chemical action plan for the
329 priority chemical substance, which addresses the priority chemical substance use(s) designated
330 by the council. The chemical action plan shall include draft regulations, for review by the
331 council and members of the public.

332 (b) A chemical action plan addressing a priority chemical substance for which
333 feasible safer alternatives have been identified for one or more designated priority uses shall
334 establish a goal of accomplishing the substitution of the identified safer alternative(s) for the
335 priority chemical substances in those designated priority chemical substance uses as
336 expeditiously as possible. The chemical action plan shall establish requirements through which
337 manufacturers and users of such priority chemical substance shall accomplish this goal, and shall
338 also describe actions to be undertaken by appropriate state agencies to ensure the goal of the plan
339 is met.

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

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

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

349 (b) require substitution of a safer alternative;

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

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

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

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

363 (iv) For uses where safer alternatives are feasible, but where substitution will require
364 manufacturers or users of priority chemical substances to make significant expenditures, such as
365 for consumer product reformulation, new equipment or training, the chemical action plan shall
366 include a targeted ABC Fund program. The timetable for completing substitutions established in

367 a chemical action plan shall take into consideration the financial needs of the manufacturers and
368 users of the priority chemical substance.

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

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

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

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

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

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

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

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

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

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

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

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

418 (d) documentation of any efforts to be taken to minimize the use of the priority
419 chemical substance and of human and environmental exposures to such substance until safer
420 alternatives are found and implemented; and

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

423 (e) In deciding whether to grant a waiver, the department shall consider: (i) whether
424 there is a need for the use of the substance; (ii) whether no safer alternative is feasibly available,
425 (iii) whether ABC Fund assistance is available to the applicant and (iv) the impact on the
426 economic viability of Massachusetts businesses. Waivers shall not be granted for more than
427 three years. In deciding whether to grant a waiver application, the department may consult with
428 the institute, the office, and the department of economic development.

429 (f) After the department has prepared a draft chemical action plan, including draft
430 regulations, the draft plan shall be submitted to the council, and to the public for comment
431 pursuant to chapter 30A. The final chemical action plan (which shall contain the department's
432 final regulations) shall be approved by the council prior to promulgation of the regulations by the
433 department.

434 (g) A chemical action plan may be updated and amended from time to time by the
435 department to reflect new scientific and/or technical information about the hazards posed by a
436 priority chemical substance, the availability a safer alternatives for a priority chemical substance
437 in a particular priority use, the feasibility of substituting a safer alternative for a priority chemical
438 substance, new priority uses of a priority chemical substance, and other information without
439 limitation. Any such revised chemical action plan shall contain draft implementing regulations
440 prepared by the department. Once a final revised chemical action plan is approved by the
441 council, the department shall promulgate final implementing regulations.

442 Section 28. Interstate Cooperation in Chemical Substance Regulation

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

448 SECTION 10. Violations of the Safer Alternatives Act

449 (a) Paragraph (B) of section 21 of chapter 21I of the General Laws as so appearing in
450 the 2008 Official Edition is hereby amended by inserting in line XX after the word "twenty," the
451 following words:

452 "or any person who violates any requirement of sections 24 through 28, inclusive,"

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

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

457 SECTION 11. Notwithstanding any general or special law to the contrary, an employer
458 separating one or more individuals from employment as a result of this act shall notify the
459 Department of Workforce Development at the time of separation. The local Workforce
460 Investment Board shall work with the Rapid Response Team set aside program within the
461 Department of Workforce Development to determine a separated individual's eligibility for
462 benefits under the set aside program. The Rapid Response Team shall establish criteria to
463 determine eligibility for benefits under the set aside program. Any individual deemed eligible for
464 benefits under this act shall be entitled to receive re-training, subject to the approval of the Rapid
465 Response Team, sufficient to qualify the individual for re-employment at a wage not less than
466 the wage he or she was receiving at the time of separation from employment. Any individual
467 deemed eligible for re-training benefits under this act shall also be eligible to receive
468 unemployment benefits during the entire period that he or she remains enrolled in, and in
469 compliance with, the requirements of any such approved retraining program.

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

472 (a) No later than one year after enactment of this section , the institute, in
473 consultation with the department and the office, shall complete a study on alternative funding
474 mechanisms for the safer alternatives in products program including, but not limited to, fees on
475 manufacturers or distributors of products containing priority chemical substances. The report
476 shall be submitted to the Joint Committee on Environment, Natural Resources and Agriculture.
477 The institute shall consider potential revenues generated by the fees, existing models for
478 applying fees to consumer products, the expected impact of fees on manufacturers and suppliers
479 of products containing toxic substances, and relationship to existing toxics user fees, the funding
480 required for the program to meet its statutory obligations and other relevant subjects. In
481 preparing its report, the institute shall consult with the administrative council and an ad hoc
482 advisory committee, including representatives from the legislature, business, environmental
483 advocacy, public health and labor communities.

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

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