SENATE DOCKET, NO. FILED ON: 11/15/2011

SENATE . . . . . No. 2079

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:

SECTION 1. Section 2 of chapter 21I of the Massachusetts General Laws, as appearing in the 2008 Official Edition, is hereby amended, in line 2, by inserting after the word "meanings" the following words: "unless defined otherwise in section 24 for the purposes of sections 24 through 28, inclusive".

SECTION 2. Section 3 of said chapter 21I, as so appearing, is hereby amended, in line 61, by inserting after the word "reduction" the following words: " substitution of safer alternatives."

SECTION 3. Section 4 of said chapter 21I, as so appearing, is hereby amended, in line 57, by inserting at the end of subsection (F) the following paragraphs:

The advisory committee shall conduct a study and approve recommendations on funding mechanisms for the safer alternatives in products program established under this chapter. The committee shall draft and, with an affirmative vote of two thirds (2/3) of the committee members, approve recommendations for a funding mechanism for the safer alternatives in

14 products program. The committee shall submit the approved recommendations to the clerks of
15 the House of Representatives and Senate and the joint committee on environment, natural
16 resources and agriculture no later than eighteen (18) months after the effective date of this
17 section.

18 Not later than twenty-four (24) months after the effective date of this act shall the
19 legislature take action upon the recommendations set forth in the above subparagraph (a).

20 SECTION 4. Said section 4 of said chapter 21I, as so appearing, is hereby amended, in
21 line 62, by inserting after subsection (G) the following subsection:

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

31 SECTION 5. Section 6 of said chapter 21I, as so appearing, is hereby further amended, in
32 line 77, by inserting after subsection (J) the following subsection:

33 (K) Shall establish a technical assistance grant program to assist organizations of
34 consumers or workers focused on the impact of substitutions of safer alternatives in specific
35 products, sectors, or uses. The grants may provide assistance for activities that may include but

36 are not limited to securing information on chemical substances and their impact on workers,
37 consumers and the environment; hiring independent technical support regarding chemical
38 substances, production processes and work organization; and paying for training programs to
39 assist affected groups in analyzing the changes.

40 SECTION 6. Chapter 21I is hereby further amended by inserting after section 6 the
41 following section:

42 Section 6A.

43 (a) In addition to any other requirements of this chapter, the institute shall seek to
44 reduce the presence of priority chemical substances in consumer products and the workplace by
45 promoting safer alternatives to such substances. The institute may develop recognition programs
46 to promote the priority chemical substance reduction achievements of industry and communities.
47 When feasible, the institute shall coordinate the programs and responsibilities relative to the
48 substitution of safer alternatives for priority chemical substances with its other programs and
49 responsibilities described in this chapter.

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

51 i. provide general information about chemical substances and actively
52 publicize the advantages of and developments in safer alternatives and the requirements of this
53 chapter, which shall include, but not be limited to, providing information about public health,
54 environmental and economic issues associated with toxics use and toxics use reduction;

55 ii. establish courses, seminars, conferences and other events and provide
56 reports, updates, guides and other publications and other means of providing technical
57 information for consumers and, as appropriate, work in coordination with the office;

58 iii. develop and provide curriculum and training for higher education students
59 and faculty on priority chemical substances and potential safer alternatives;

60 iv. sponsor or engage in research to identify potential priority chemical
61 substances and potential safer alternatives to such substances;

62 v. sponsor research or pilot projects to develop and demonstrate innovative
63 technologies for implementing safer alternatives to priority chemical substances;

64 vi. develop in consultation with the department and office, a safer alternatives
65 curriculum and training program to supplement the toxics use reduction planner training
66 program; and

67 vii. provide safer alternatives implementation training and assistance to
68 citizens, community groups, nonprofit organizations and institutions, workers, labor
69 representatives, businesses, consumer product supply chains and state and local government
70 boards and officials; provided, however, that such training and assistance shall provide such
71 individuals and groups with an understanding of the public health and environmental impacts of
72 the presence of chemical substances, the methods and strategies for substituting safer alternatives
73 for priority chemical substances and the requirements of this chapter.

74 (c) No later than eighteen (18) months after effective date of this section, the institute
75 shall publish a list of chemical substances commonly used in Massachusetts industry or in

76 consumer products sold in Massachusetts. In consultation with the science advisory board, the
77 institute shall categorize chemicals on said list into one of four categories: chemicals of high
78 concern, chemicals of concern, chemicals of unknown concern, and chemicals of low concern.
79 The chemicals of high concern category shall include chemicals recognized as carcinogens,
80 mutagens and reproductive toxins; chemicals recognized as persistent, bioaccumulative and toxic
81 chemicals; chemicals recognized as very persistent and very bioaccumulative chemicals;
82 chemicals recognized as endocrine disruptors; and other chemicals of equivalent concern. The
83 institute may create subcategories within these four categories. These categories may be
84 adjusted to take account of current chemical lists and additional information, including
85 information on emerging materials. From time to time, but at least every four (4) years, the
86 institute, in consultation with the board, shall refine the list to incorporate new scientific
87 information and data, and publish a revised version of the list, as needed. Failure to refine the
88 list shall not invalidate the list.

89 SECTION 7. Chapter 21I is hereby amended by inserting after section 23 the following
90 5 sections:

91 Section 24. Safer Alternatives Definitions

92 For the purposes of sections 24 through 28, the following terms shall have the following
93 meanings:

94 "Alternative", a chemical substance, material, product, process, function, system, or other
95 action of equivalent function which can be reasonably substituted for the use of a particular
96 chemical substance.

97 “Article” means a manufactured item, other than an item which is manufactured at the
98 facility, and which is formed to a specific shape or design during manufacture, has end use
99 functions dependent in whole or in part upon its shape or design during end use, and does not
100 release a chemical substance under normal conditions of processing or use of that item at the
101 facility or establishments.

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

111 “Consumer product”, any item or formulation sold for residential or commercial use,
112 including any component, part or packaging, provided that consumer product shall not mean
113 items made available for use in Massachusetts for the sole purpose of redistribution, sale, supply,
114 or lease for use outside of Massachusetts.

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

117 “Manufacturer”, any person, firm, association, partnership, corporation, governmental
118 entity, organization, combination or joint venture which produces a consumer product containing

119 a priority chemical substance or an importer or domestic distributor of a consumer product
120 containing a priority chemical substance and that is produced in a foreign country. In the case
121 of a consumer product made with components made by different manufacturers, the
122 manufacturer is the manufacturer who produced the component containing the priority chemical
123 substance. If the consumer product or component is produced in a foreign country, the
124 manufacturer is the importer or domestic distributor; provided, however, that if a company from
125 whom an importer purchases the consumer product or component has a United States presence
126 or assets, that company shall be considered to be the manufacturer.

127 "Medical Device", an instrument, apparatus, implement, machine, contrivance, implant,
128 in vitro reagent, or other similar or related article, including a component part, or accessory
129 which is recognized in the official National Formulary, or the United States Pharmacopoeia, or
130 any supplement to them, intended for use in the diagnosis of disease or other conditions, or in
131 the cure, mitigation, treatment, or prevention of disease, in man or other animals, or intended to
132 affect the structure or any function of the body of man or other animals, and which does not
133 achieve any of its primary intended purposes through chemical action within or on the body of
134 man or other animals and which is not dependent upon being metabolized for the achievement of
135 any of its primary intended purposes.

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

141 “Substitute”, to replace a chemical substance by using a safer alternative.

142 “Substitution”, the replacement of a chemical substance through the use of a safer
143 alternative.

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

148 Section 25.

149 (a) No later than twelve (12) months after enactment of this section, the council shall
150 promulgate regulations that establish processes and procedures for designating priority chemical
151 substances in accordance with chapter; and require notification by businesses to the department
152 in accordance with this chapter.

153 (b) Upon the appropriation of sufficient resources, the council by regulation shall
154 designate 2 to 4 chemical substances annually from the list of chemicals of high concern,
155 established pursuant to section 6A, as priority chemical substances.

156 (c) In designating the number of priority chemical substances, the council shall
157 consider institute resources for performing safer alternatives assessment reports.

158 i. In designating priority chemical substances, the council shall prioritize
159 substances that adversely impact human health and/or the environment with highest priority
160 given to preventing adverse impacts on children, infants, developing fetuses, and workers, and

161 other vulnerable populations. In designating priority chemical substances the council may
162 consider opportunities that strengthen the Commonwealth's economy.

163 ii. Each designation of a priority chemical substance shall include
164 appropriate de minimus thresholds below which the requirements of section 25(e)(i.) and section
165 25(e)(ii.) shall not apply.

166 (d) No consumer product containing a priority chemical substance shall be sold,
167 offered for sale, or distributed for use in the Commonwealth unless the product's manufacturer
168 has submitted notification to the department in accordance with section 25(e). No priority
169 chemical substance shall be used within the Commonwealth unless the user of a priority
170 chemical substance has submitted notification to the department in accordance with section
171 25(e).

172 (e) Manufacturers and users of a priority chemical substance shall notify the institute
173 and the department within six (6) months of the designation of that substance in accordance with
174 the following:

175 i. Manufacturers shall file a notice with the institute and the department
176 identifying the consumer product, the approximate number of units distributed in the
177 Commonwealth, an estimate of the amount or concentration of the priority chemical substance
178 contained in each unit, the purpose for including the priority chemical substance, and the name,
179 address, and phone number of a contact person, and other relevant information the department
180 may require. The department may allow a manufacturer, distributor or trade group to supply the
181 information required above for a consumer product category rather than an individual consumer

182 product. The manufacturer shall update and revise the notification whenever there is a
183 significant change in the information or when requested by the department.

184 ii. Users of a priority chemical substance shall file notice with the institute
185 and the department identifying the name and address of each facility where the priority chemical
186 substance is manufactured, processed, or otherwise used, the mass of each priority chemical
187 substance manufactured, processed, or otherwise used, the purpose for using the priority
188 chemical substance, and the name, address, and phone number of a contact person, and other
189 relevant information the department may require. The user of a priority chemical substance shall
190 update and revise the notification whenever there is a significant change in the information or
191 when requested by the department. Large quantity toxics users and other toxics users within a
192 designated priority user segments already subject to reporting on a priority chemical substance
193 under section 10 shall be exempt from the requirements of this section for that priority chemical
194 substance.

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

197 iv. The department shall establish procedures to assure compliance with the
198 requirements of this section and penalties for noncompliance.

199 v. Distribution of information:

200 1. Public disclosure of confidential business information submitted to
201 the institute and the department pursuant to this section shall be governed by the requirements of
202 section 10 of chapter 66.

203 2. Manufacturers of a consumer product containing a priority
204 chemical substance shall provide notice to any person who sells, offers to sell, or distributes such
205 product for use in the Commonwealth, identifying the priority chemical substance, its purpose in
206 the consumer product, any measures that should be undertaken to reduce a user's exposure to the
207 priority chemical substance, and proper management for discarding the consumer product safely
208 at the end of its useful life. Any person who sells, offers to sell, or distributes such a consumer
209 product for use in the commonwealth shall provide such notice to all purchasers of the product.

210 3. Users of a priority chemical substance shall provide notice to
211 workers in their facility or business regarding the use of the priority chemical substance.

212 (f) Any consumer product containing a priority chemical substance for which federal law
213 governs notice in a manner that preempts state authority shall be exempt from the requirements
214 of this section.

215 (g) The institute shall prepare a Safer Alternatives Assessment Report for each substance
216 designated by the council as a priority chemical substance. The council shall establish a
217 schedule for the development of each safer alternatives assessment report, in consultation with
218 the institute. For each safer alternatives assessment report, the institute shall:

219 i. identify the uses and functions of the priority chemical substance
220 (including its incorporation into consumer products), focusing on uses and functions in the
221 Commonwealth. Uses and functions shall be identified and selected for further study and action,
222 with highest priority given to uses that adversely impact children, infants, developing fetuses,
223 and workers, and other vulnerable populations;

224 ii. identify whether alternatives are available for those selected uses and
225 functions of the priority chemical substance;

226 iii. identify whether any of the selected uses of the priority chemical
227 substance are of a clearly unnecessary nature;

228 iv. research and study relevant factors to characterize feasible alternatives;

229 v. provide a qualitative discussion of the economic viability, opportunities
230 and costs associated with adopting and implementing any safer alternatives. Such discussion
231 may include a qualitative characterization of the economic impacts and benefits of substitution,
232 the extent of human exposure to the priority chemical substance that could be eliminated through
233 substitution or other actions and potential public health benefits or reductions in health care
234 costs;

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

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

242 viii. seek comments from the science advisory board, the advisory committee
243 and members of the public, including all regions of the commonwealth;

244 ix. publish the results of the safer alternatives assessment report; and

245 x. periodically review the safer alternative assessment report and its findings
246 with the advisory committee and the council and revise such report as necessary to update it and
247 to address new recommendations. Revised reports shall be made available to the public for
248 comment, and final revised reports shall be published. Such periodic reviews shall be conducted
249 no less frequently than once every five (5) years.

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

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

257 (j) Sections 24 through 28 inclusively shall not apply to medical devices.

258 Section 26. (a) The institute shall present each completed safer alternatives assessment
259 report to the council. The council shall use the completed report to identify uses of the priority
260 chemical substance that pose a significant hazard to human health or the environment, with
261 highest priority given to uses that adversely impact children, infants, developing fetuses, and
262 workers, and other vulnerable populations. In identifying such uses of the priority chemical
263 substance, the council shall consider both uses of the priority chemical substance itself as well as
264 uses of consumer products that contain the priority chemical substance. The council shall
265 designate any such uses as priority chemical substance uses.

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

270 Section 27. (a) Not later than eighteen (18) months after the council identifies priority
271 chemical substance uses, the department, in consultation with the institute, the office, the
272 advisory committee, and other agencies as appropriate, shall prepare a chemical action plan for
273 the priority chemical substance, which addresses the priority chemical substance use(s)
274 designated by the council. The chemical action plan shall include draft regulations, for review
275 by the council and members of the public.

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

283 i. Where possible, the chemical action plan shall seek to strengthen
284 Massachusetts business and develop job opportunities, and to coordinate state activities to
285 accomplish this goal. In preparing the chemical action plan, the department shall consult with the
286 institute, the office, and other relevant state agencies and authorities to identify and plan for
287 coordinated actions of these agencies and authorities to achieve the plan's goal.

288 ii. To accomplish the goals established in this section, a chemical action plan
289 for a priority chemical substance use with feasible alternatives shall:

290 a. identify specific actions that manufacturers and users of priority
291 chemical substances shall be required to implement;

292 b. require substitution of a safer alternative;

293 c. establish schedules, timelines, and deadlines for achieving
294 substitution of the priority chemical substance with safer alternatives, for specified priority uses;

295 d. where appropriate, require manufacturers or users of priority
296 chemical substances to prepare and submit to the department plans to effect the substitution(s);
297 and

298 e. provide for technical assistance to manufacturers and users of
299 priority chemical substances.

300 iii. In establishing deadlines and schedules for substituting safer alternatives
301 for priority chemical substances, the department shall consider the potential impacts to human
302 health and the environment of the continued use of the priority chemical substance. If children
303 or workers will continue to be exposed to one or more priority chemical substances during the
304 period in which substitution is being implemented, then the chemical action plan shall include
305 measures a manufacturer or user of a priority chemical substance, as appropriate, shall take to
306 eliminate or reduce exposure of a priority chemical substance to those populations.

307 iv. The timetable for completing substitutions established in a chemical action
308 plan shall take into consideration the financial needs of the manufacturers and users of the
309 priority chemical substance.

310 v. Where substitution planning requirements are imposed on large quantity
311 toxics users or toxics users within priority user segments, those toxics users shall be exempt from
312 the requirements of this chapter for that particular priority chemical substance for as long as the
313 substitution requirements are in effect.

314 (c) Where the council has not identified feasible safer alternatives for one or more
315 priority uses of a priority chemical substance, the chemical action plan shall: identify steps that
316 manufacturers and users of a priority chemical substance, state agencies and others shall take to
317 identify or develop a feasible safer alternative for the priority chemical substance use; shall
318 require manufacturers and users of priority chemical substances to reduce human exposure to
319 and environmental contamination from the priority chemical substance in that use; where
320 possible seek to strengthen Massachusetts business and develop job opportunities; and
321 coordinate state activities to accomplish this goal. In preparing the chemical action plan, the
322 department shall consult with the institute, the office, and other relevant state agencies and
323 authorities to develop a plan that coordinates the actions of these agencies and authorities to
324 achieve the plan's goal. The department shall consider the potential impacts to human health and
325 the environment of the continued and unmitigated use of the priority chemical substance. The
326 chemical action plan for priority uses of a priority chemical substance for which the council has
327 not identified a feasible safer alternative may include, but shall not be limited to, the following:

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

331 ii. where appropriate, requirements for handling, storage and/or waste
332 management, as appropriate to reduce exposure to workers and consumers to the priority
333 chemical substance in priority uses;

334 iii. requirements for consumer product labeling and other notification to users
335 that a consumer product contains a priority chemical substance and advice on the proper
336 handling and disposal to minimize human exposure to the priority chemical substance; and

337 iv. limitations on certain continued uses of the priority chemical substance in
338 specific applications, as appropriate.

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

345 i. authorize the filing with the department of an application to use an
346 alternative substance that has not been identified as an acceptable alternative, documenting with
347 toxicity and exposure data how the proposed alternative substance would ensure protection of
348 health and the environment and, in response to such request, the department, in consultation with
349 the institute, shall determine whether such alternative is acceptable, or

350 ii. authorize the filing with the department of an application for a waiver of a
351 substitution deadline, certifying that there is no safer alternative that is technically or
352 economically feasible for a particular use of the substance; provided, however, that such waiver
353 application shall include:

354 a. identification of the specific use of the priority chemical substance
355 for which a waiver is sought;

356 b. identification of all alternatives considered and their cost and
357 feasibility considerations;

358 c. the basis for finding that there is no feasible safer alternative;

359 d. documentation of any efforts to be taken to minimize the use of the
360 priority chemical substance and of human and environmental exposures to such substance until
361 safer alternatives are found and implemented; and

362 e. the steps the applicant shall take to identify safer alternatives in
363 the following three (3) years;

364 (e) In deciding whether to grant a waiver, the department shall consider: (i) whether
365 there is a need for the use of the substance; (ii) whether no safer alternative is feasibly available;
366 and (iii) the impact on the economic viability of Massachusetts businesses. Waivers shall not be
367 granted for more than three years at a time. In deciding whether to grant a waiver application,
368 the department may consult with the institute, the office, and the department of economic
369 development.

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

375 (g) A chemical action plan may be updated and amended from time to time by the
376 department to reflect new scientific and/or technical information about the hazards posed by a
377 priority chemical substance, the availability a safer alternatives for a priority chemical substance
378 in a particular priority use, the feasibility of substituting a safer alternative for a priority chemical
379 substance, new priority uses of a priority chemical substance, and other information without
380 limitation. Any such revised chemical action plan shall contain draft implementing regulations
381 prepared by the department. Once a final revised chemical action plan is approved by the
382 council, the department shall promulgate final implementing regulations.

383 Section 28. Certain functions provided for in this chapter may be transferred to or carried
384 out in cooperation with an interstate entity. The interstate entity may, among other functions:
385 compile and categorize chemical lists, produce alternatives assessment reports; develop model
386 chemical action plans and consumer product or chemical use registries. The department may
387 promulgate regulations to carry out this section.

388 SECTION 8. Paragraph (B) of section 21 of said chapter 21I of the General Laws, as so
389 appearing, is hereby amended, in line 9, by inserting after the word "twenty" the following
390 words: " or (iii) violates any requirement of sections 24 through 28, inclusive,"

391 SECTION 9. Section 21 of said chapter 21I of the General Laws, as so appearing, is
392 hereby amended, in line 25, by inserting after subsection (C) the following subsection:

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

395 SECTION 10. Notwithstanding any general or special law to the contrary, an employer
396 separating one or more individuals from employment as a result of this chapter shall notify the
397 Department of Workforce Development at the time of separation. The local Workforce
398 Investment Board shall work with the Rapid Response Team set aside program within the
399 Department of Workforce Development to determine a separated individual's eligibility for
400 benefits under the set aside program. The Rapid Response Team shall establish criteria to
401 determine eligibility for benefits under the set aside program. Any individual deemed eligible
402 for benefits under this act shall be entitled to receive re-training, subject to the approval of the
403 Rapid Response Team, sufficient to qualify the individual for re-employment at a wage not less
404 than the wage he or she was receiving at the time of separation from employment. Any
405 individual deemed eligible for re-training benefits under this act shall also be eligible to receive
406 unemployment benefits during the entire period that he or she remains enrolled in, and in
407 compliance with, the requirements of any such approved retraining program.

408 SECTION 11. Chapter 21I is hereby amended by inserting after section 11 the following
409 section:

410 Section 11A. The department of environmental protection, in consultation with the Toxic
411 Use Reduction Institute at the University of Massachusetts at Lowell, shall prepare chemical
412 action plans for the following three (3) chemicals and specific uses: cadmium as found in

413 children's products, trichloroethylene as found in industrial degreasers, and nonylphenol
414 ethoxylates as found in household cleaning products.

415 The chemical action plans shall include draft regulations, for review by the council and
416 members of the public. Where possible, the chemical action plan shall seek to strengthen
417 Massachusetts business and develop job opportunities, and to coordinate state activities to
418 accomplish this goal. In preparing the chemical action plan, the department shall consult with
419 the institute, the office, and other relevant state agencies and authorities to identify and plan for
420 coordinated actions of these agencies and authorities to achieve the plan's goal.

421 To accomplish the goals established in this section, a chemical action plan for these three
422 chemical substances' use with feasible alternatives shall:

423 (a) identify specific actions that manufacturers and users of these chemical
424 substances shall be required to implement;

425 (b) require substitution of a safer alternative;

426 (c) establish schedules, timelines, and deadlines for achieving substitution of these
427 chemical substances with safer alternatives, for specified uses;

428 (d) where appropriate, require manufacturers or users of these chemical substances to
429 prepare and submit to the department plans to effect the substitution(s); and

430 (e) provide for technical assistance to manufacturers and users of these chemical
431 substances.

432 In establishing deadlines and schedules for substituting safer alternatives under this
433 section, the department shall consider the potential impacts to human health and the environment

434 of the continued use of the priority chemical substance. If children or workers will continue to
435 be exposed to these three chemical substances during the period in which substitution is being
436 implemented, then the chemical action plan shall include measures a manufacturer or user of one
437 of these chemical substances, as appropriate, shall take to eliminate or reduce exposure of these
438 chemical substances to those populations.

439 The timetable for completing substitutions established in a chemical action plan shall take
440 into consideration the financial needs of the manufacturers and users of the chemical substance.

441 Where substitution planning requirements are imposed on large quantity toxics users or
442 toxics users within user segments, those toxics users shall be exempt from the requirements of
443 this chapter for that particular chemical substance for as long as the substitution requirements are
444 in effect.

445 Where the council has not identified feasible safer alternatives for a specified use of these
446 chemical substances, the chemical action plan shall: identify steps that manufacturers and users
447 of the chemical substance, state agencies and others shall take to identify or develop a feasible
448 safer alternative for the chemical substance use; shall require manufacturers and users of the
449 chemical substances to reduce human exposure to and environmental contamination from the
450 chemical substance in that use; where possible seek to strengthen Massachusetts business and
451 develop job opportunities; and coordinate state activities to accomplish this goal. In preparing
452 the chemical action plan, the department shall consult with the institute, the office, and other
453 relevant state agencies and authorities to develop a plan that coordinates the actions of these
454 agencies and authorities to achieve the plan's goal. The department shall consider the potential
455 impacts to human health and the environment of the continued and unmitigated use of the

456 chemical substance. The chemical action plan for specified uses of the chemical substance for
457 which the council has not identified a feasible safer alternative may include, but shall not be
458 limited to, the following:

459 (a) research into and development of safer alternatives to the use of these chemical
460 substances;

461 (b) where appropriate, requirements for handling, storage or waste management, as
462 appropriate to reduce exposure to workers and consumers to the chemical substance in specified
463 use;

464 (c) requirements for consumer product labeling and other notification to users that a
465 consumer product contains a chemical substance and advice on the proper handling and disposal
466 to minimize human exposure to the chemical substance; and

467 (d) limitations on certain continued uses of the chemical substance in specific
468 applications.

469 Each chemical action plan shall include draft regulations required for implementation.
470 Such regulations shall include appropriate requirements for manufacturers and users of the
471 chemical substances to file with the department plans to achieve compliance, periodic reports
472 about progress toward implementation or about continued use of the chemical substance, and
473 periodic certifications of compliance with any substitution or risk reduction requirements, or
474 alternatively:

475 (a) authorize the filing with the department of an application to use an alternative
476 substance that has not been identified as an acceptable alternative, documenting with toxicity and

477 exposure data how the proposed alternative substance would ensure protection of health and the
478 environment and, in response to such request, the department, in consultation with the institute,
479 shall determine whether such alternative is acceptable, or

480 (b) authorize the filing with the department of an application for a waiver of a
481 substitution deadline, certifying that there is no safer alternative that is technically or
482 economically feasible for a particular use of the substance;

483 In deciding whether to grant a waiver, the department shall consider: (i) whether there is
484 a need for the use of the substance; (ii) whether no safer alternative is feasibly available; and (iii)
485 the impact on the economic viability of Massachusetts businesses. Waivers shall not be granted
486 for more than three years. In deciding whether to grant a waiver application, the department may
487 consult with the institute, the office, and the department of economic development.

488 After the department has prepared a draft chemical action plan, including draft
489 regulations, the draft plan shall be published for public comment pursuant to chapter 30A. The
490 final chemical action plan shall contain the department's final regulations and shall be approved
491 by the council prior to promulgation of the regulations by the department.

492 A chemical action plan may be updated and amended from time to time by the
493 department to reflect new scientific or technical information about the hazards posed by the
494 chemical substance, the availability a safer alternatives for the chemical substance in a specified
495 use, the feasibility of substituting a safer alternative for the chemical substance, new priority uses
496 of the chemical substance, and other information without limitation. Any such revised chemical
497 action plan shall contain draft implementing regulations prepared by the department. Once a

498 final revised chemical action plan is approved by the council, the department shall promulgate

499 final implementing regulations.

500 SECTION 12. Sections 1, 2 and 4 through 10 of this act shall be effective January 1,

501 2015.

502 SECTION 13. Sections 3 and 11 of this act shall be effective upon passage.