

SENATE No. 397**The Commonwealth of Massachusetts**

PRESENTED BY:

Steven A. Tolman

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:
<i>Steven A. Tolman</i>	
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Eileen M. Donoghue</i>	
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Daniel B. Winslow</i>	<i>9th Norfolk</i>
<i>Katherine M. Clark</i>	<i>Fifth Middlesex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Carlo Basile</i>	<i>1st Suffolk</i>
<i>Harriette L. Chandler</i>	

<i>Cynthia S. Creem</i>	
<i>Kenneth J. Donnelly</i>	
<i>James B. Eldridge</i>	
<i>Patricia D. Jehlen</i>	
<i>Michael O. Moore</i>	
<i>Stanley C. Rosenberg</i>	<i>Hampshire, Franklin and Worcester</i>
<i>James E. Timilty</i>	
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Sonia Chang-Diaz</i>	
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Susan C. Fargo</i>	
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>Marc R. Pacheco</i>	
<i>Mark C. Montigny</i>	
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol and Plymouth</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Karen E. Spilka</i>	

SENATE No. 397

By Mr. Tolman, petition (accompanied by bill, Senate, No. 397) of Naughton, Ashe, Provost and other members of the General Court for legislation for a healthy Massachusetts: safer alternatives to toxic chemicals [Joint Committee on Environment, Natural Resources and Agriculture].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 442 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..

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to
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;,
therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation
of the public convenience.

*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. Section 2 of chapter 21I of the Massachusetts General Laws, as appearing
2 in the 2008 Official Edition, is hereby amended, in line 2, by inserting after the word “meanings”
3 the following words:-- “unless defined otherwise in section 24 for the purposes of sections 24
4 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 6 of said chapter 21I, as so appearing, is hereby further amended, in lines 75 through 77, inclusive, by inserting the following paragraph after paragraph (J):

(J) The institute shall establish a technical assistance grant program to assist organizations of consumers or workers focused on the impact of substitutions of safer alternatives in specific products, sectors, or uses. The grants may provide assistance for activities that may include but are not limited to securing information on chemical substances and their impact on workers, consumers and the environment; hiring independent technical support regarding chemical substances, production processes and work organization; and paying for training programs to assist affected groups in analyzing the changes.

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

(H) In accordance with procedures that it may adopt, the advisory committee may provide comment to the council on all aspects of the safer alternatives program, including recommendations for chemical substances to be designated as priority chemical substances, and comments relative to chemical action plans, safer alternatives assessment reports, and the composition of the chemical list created in paragraph (a) of section 24. All written official comment shall be considered a matter of public record. Upon written request from the advisory committee, and for no more than three chemical substances annually, the council shall provide a

written statement to the advisory committee explaining why a chemical substance has not been chosen for assessment according to the provisions of section 25.

SECTION 5. Chapter 21I is hereby further amended by inserting after section 6 the following section:-

Section 6A.

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

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

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

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

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

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

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

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

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

(c) No later than eighteen months after enactment of this Act , the institute shall publish a list of chemical substances commonly used in Massachusetts industry or in consumer products sold in Massachusetts. In consultation with the science advisory board, the institute shall categorize chemicals on said list into one of four categories: chemicals of high concern, chemicals of concern, chemicals of unknown concern, and chemicals of low concern. In preparing this categorization, the institute shall rely on published government lists of chemical categorizations such as, but not limited to, the Canadian Domestic Substances List

Categorization, the European Commission’s list of substances of very high concern, Washington State’s list of persistent, bioaccumulative and toxic chemicals, and the International Agency for Research on Cancer’s list of carcinogens. However, the chemicals of high concern category shall include chemicals recognized as carcinogens, mutagens and reproductive toxins; chemicals recognized as persistent, bioaccumulative and toxic chemicals; chemicals recognized as very persistent and very bioaccumulative chemicals; chemicals recognized as endocrine disruptors; and other chemicals of equivalent concern. The institute may create subcategories within these four categories. These categories may be adjusted to take account of current chemical lists and additional information, including information on emerging materials. From time to time, but at least every 4 years, the institute, in consultation with the board, shall refine the list to incorporate new scientific information and data, and publish a revised version of the list, as needed. Failure to refine the list shall not invalidate the list.

SECTION 6. Section 7 of said chapter 21I, as appearing in the 2008 Official Edition, is hereby amended by inserting at the end thereof the following 2 paragraphs:-

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

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

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

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

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

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

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

99 (6) publications focused on particular user sectors.

100 The ABC Fund shall be developed with assistance from and collaboration with the
101 department of labor and industries, the department of economic development, the office, the
102 department of labor and workforce development, and the institute.

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

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

110 Section 24. Safer Alternatives Definitions

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

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

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

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

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

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

123 “Chemical substance”, any element, chemical, compound, mixture of elements and/or
124 compounds, or class of compounds, provided that a chemical substance shall not be subject to
125 the provisions of sections 24 through 28, inclusive, when it is: (1) present in crude, lubricating,
126 or fuel oils or petroleum materials being held for direct wholesale or retail sale; (2) present in
127 fuels used in combustion to produce electricity, steam, or heat; (3) present as a naturally-
128 occurring substance in fuels and in emissions or byproducts as a result of the combustion of
129 fuels; or (4) required to be present or used in the manufacturing of a product manufactured in

130 Massachusetts by a contractor or subcontractor pursuant to a contract with the Department of
131 Defense or the Department of Homeland Security.

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

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

138 “Manufacturer”, any person, firm, association, partnership, corporation, governmental
139 entity, organization, combination or joint venture which produces a consumer product containing
140 a priority chemical substance or an importer or domestic distributor of a consumer product
141 containing a priority chemical substance and that is produced in a foreign country. In the case of
142 a consumer product made with components made by different manufacturers, the manufacturer is
143 the manufacturer who produced the component containing the priority chemical substance. If the
144 consumer product or component is produced in a foreign country, the manufacturer is the
145 importer or domestic distributor; provided, however, that if a company from whom an importer
146 purchases the consumer product or component has a United States presence or assets, that
147 company shall be considered to be the manufacturer.

148 "Safer Alternative", an alternative, including a change in chemical substance, material,
149 product, process, function, system or other action, that replaces a chemical substance currently in
150 use and that would be effective in reducing the chemical substance’s harm to human health or the

environment without causing equivalent or greater harm to workers, consumers or the environment.

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

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

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

Section 25. Designation and Assessment of Priority Chemical Substances

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

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

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

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

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

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

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

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

(i) Manufacturers shall file a notice with the institute and the department identifying the consumer product, the approximate number of units distributed in the Commonwealth, an estimate of the amount or concentration of the priority chemical substance contained in each unit, the purpose for including the priority chemical substance, and the name, address, and phone number of a contact person, and other relevant information the department may require. The

194 department may allow a manufacturer, distributor or trade group to supply the information
195 required above for a consumer product category rather than an individual consumer product.
196 The manufacturer shall update and revise the notification whenever there is a significant change
197 in the information or when requested by the department.

198 (ii) Users of a priority chemical substance shall file notice with the institute and the
199 department identifying the name and address of each facility where the priority chemical
200 substance is manufactured, processed, or otherwise used, the mass of each priority chemical
201 substance manufactured, processed, or otherwise used, the purpose for using the priority
202 chemical substance, and the name, address, and phone number of a contact person, and other
203 relevant information the department may require. The user of a priority chemical substance shall
204 update and revise the notification whenever there is a significant change in the information or
205 when requested by the department. Large quantity toxics users and other toxics users within a
206 designated priority user segments already subject to reporting on a priority chemical substance
207 under section 10 shall be exempt from the requirements of this section for that priority chemical
208 substance.

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

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

213 (v) Distribution of information:

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

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

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

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

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

(i). identify the uses and functions of the priority chemical substance (including its incorporation into consumer products), focusing on uses and functions in the Commonwealth. Uses and functions shall be identified and selected for further study and action, with highest

priority given to uses that adversely impact children, infants, developing fetuses, and workers, and other vulnerable populations, consistent with the criteria set forth in section 25(b)(ii).

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

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

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

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

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

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

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

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

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

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

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

Section 26. Designation of Priority Chemical Substance Uses

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

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

Section 27. Chemical Action Plans

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

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

(i) Where possible, the chemical action plan shall seek to strengthen Massachusetts business and develop job opportunities, and to coordinate state activities to accomplish this goal. In preparing the chemical action plan, the department shall consult with the institute, the office,

and other relevant state agencies and authorities to identify and plan for coordinated actions of these agencies and authorities to achieve the plan's goal.

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

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

(b) require substitution of a safer alternative;

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

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

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

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

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

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

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

chemical action plan for priority uses of a priority chemical substance for which the council has not identified a feasible safer alternative may include, but shall not be limited to, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

deciding whether to grant a waiver application, the department may consult with the institute, the office, and the department of economic development.

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

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

Section 28. Interstate Cooperation in Chemical Substance Regulation

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

SECTION 8 Violations of the Safer Alternatives Act

(a) Paragraph (B) of section 21 of chapter 21I of the General Laws as so appearing in the 2008 Official Edition is hereby amended by inserting in line XX after the word “twenty,” the following words: “or any person who violates any requirement of sections 24 through 28, inclusive,”

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

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

SECTION 9. Notwithstanding any general or special law to the contrary, an employer separating one or more individuals from employment as a result of this act shall notify the Department of Workforce Development at the time of separation. The local Workforce Investment Board shall work with the Rapid Response Team set aside program within the Department of Workforce Development to determine a separated individual’s eligibility for benefits under the set aside program. The Rapid Response Team shall establish criteria to determine eligibility for benefits under the set aside program. Any individual deemed eligible for benefits under this act shall be entitled to receive re-training, subject to the approval of the Rapid Response Team, sufficient to qualify the individual for re-employment at a wage not less than the wage he or she was receiving at the time of separation from employment. Any individual deemed eligible for re-training benefits under this act shall also be eligible to receive unemployment benefits during the entire period that he or she remains enrolled in, and in compliance with, the requirements of any such approved retraining program.

SECTION 10. Study of Funding Mechanisms for the Safer Alternatives in Products
Program

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

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

SECTION 11. Nothing in this act shall require actions preempted by federal law.