

HOUSE No. 4865

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

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:

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:

4 “unless defined otherwise in section 24 for the purposes of sections 24 through 28,
5 inclusive”.

6 SECTION 2. Section 3 of said chapter 21I, as so appearing, is hereby amended, in line
7 61, by inserting after the word “reduction” the following words: “ substitution of safer
8 alternatives.”

9 SECTION 3. Section 6 of said chapter 21I, as so appearing, is hereby further amended,
10 in lines 75 through 77, inclusive, by inserting the following paragraph after paragraph (J):

11 (J) The institute shall establish a technical assistance grant program to assist
12 organizations of consumers or workers focused on the impact of substitutions of safer
13 alternatives in specific products, sectors, or uses. The grants may provide assistance for

14 activities that may include but are not limited to securing information on chemical substances
15 and their impact on workers, consumers and the environment; hiring independent technical
16 support regarding chemical substances, production processes and work organization; and paying
17 for training programs to assist affected groups in analyzing the changes.

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

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

29 SECTION 5. Chapter 21I is hereby further amended by inserting after section 6 the
30 following section:Section 6A. (a) In addition to any other requirements of this chapter, the
31 institute shall seek to reduce the presence of priority chemical substances in consumer products
32 and the workplace by promoting safer alternatives to such substances. The institute may develop
33 recognition programs to promote the priority chemical substance reduction achievements of
34 industry and communities. When feasible, the institute shall coordinate the programs and

35 responsibilities relative to the substitution of safer alternatives for priority chemical substances
36 with its other programs and responsibilities described in this chapter.

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

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

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

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

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

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

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

54 (7) provide safer alternatives implementation training and assistance to citizens,
55 community groups, nonprofit organizations and institutions, workers, labor representatives,

56 businesses, consumer product supply chains and state and local government boards and officials;
57 provided, however, that such training and assistance shall provide such individuals and groups
58 with an understanding of the public health and environmental impacts of the presence of
59 chemical substances, the methods and strategies for substituting safer alternatives for priority
60 chemical substances and the requirements of this chapter.

61 (c) No later than eighteen months after effective date of this section, the institute shall
62 publish a list of chemical substances commonly used in Massachusetts industry or in consumer
63 products sold in Massachusetts. In consultation with the science advisory board, the institute
64 shall categorize chemicals on said list into one of four categories: chemicals of high concern,
65 chemicals of concern, chemicals of unknown concern, and chemicals of low concern. The
66 chemicals of high concern category shall include chemicals recognized as carcinogens, mutagens
67 and reproductive toxins; chemicals recognized as persistent, bioaccumulative and toxic
68 chemicals; chemicals recognized as very persistent and very bioaccumulative chemicals;
69 chemicals recognized as endocrine disruptors; and other chemicals of equivalent concern. The
70 institute may create subcategories within these four categories. These categories may be
71 adjusted to take account of current chemical lists and additional information, including
72 information on emerging materials. From time to time, but at least every four (4) years, the
73 institute, in consultation with the board, shall refine the list to incorporate new scientific
74 information and data, and publish a revised version of the list, as needed. Failure to refine the
75 list shall not invalidate the list.

76 SECTION 6. Chapter 21I is hereby amended by inserting after section 23 the following
77 5 sections:

78 Section 24. Safer Alternatives Definitions

79 For the purposes of sections 24 through 28, the following terms shall have the following
80 meanings:

81 “Alternative”, a chemical substance, material, product, process, function, system, or other
82 action of equivalent function which can be reasonably substituted for the use of a particular
83 chemical substance.

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

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

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

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

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

104 “Manufacturer”, any person, firm, association, partnership, corporation, governmental
105 entity, organization, combination or joint venture which produces a consumer product containing
106 a priority chemical substance or an importer or domestic distributor of a consumer product
107 containing a priority chemical substance and that is produced in a foreign country. In the case of
108 a consumer product made with components made by different manufacturers, the manufacturer is
109 the manufacturer who produced the component containing the priority chemical substance. If the
110 consumer product or component is produced in a foreign country, the manufacturer is the
111 importer or domestic distributor; provided, however, that if a company from whom an importer
112 purchases the consumer product or component has a United States presence or assets, that
113 company shall be considered to be the manufacturer.

114 “Medical Device”, an instrument, apparatus, implement, machine, contrivance, implant,
115 in vitro reagent, or other similar or related article, including a component part, or accessory
116 which is recognized in the official National Formulary, or the United States Pharmacopoeia, or
117 any supplement to them, intended for use in the diagnosis of disease or other conditions, or in
118 the cure, mitigation, treatment, or prevention of disease, in man or other animals, or intended to
119 affect the structure or any function of the body of man or other animals, and which does not
120 achieve any of its primary intended purposes through chemical action within or on the body of

121 man or other animals and which is not dependent upon being metabolized for the achievement of
122 any of its primary intended purposes.

123 “Safer Alternative”, an alternative, including a change in chemical substance, material,
124 product, process, function, system or other action, that replaces a chemical substance currently in
125 use and that would be effective in reducing the chemical substance’s harm to human health or the
126 environment without causing equivalent or greater harm to workers, consumers or the
127 environment.

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

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

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

135 Section 25. (a) No later than twelve (12) months after enactment of this section, the
136 council shall promulgate regulations that establish processes and procedures for designating
137 priority chemical substances in accordance with chapter; and require notification by businesses
138 to the department in accordance with this chapter.

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

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

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

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

152 (d) No consumer product containing a priority chemical substance shall be sold,
153 offered for sale, or distributed for use in the Commonwealth unless the product's manufacturer
154 has submitted notification to the department in accordance with section 25(c). No priority
155 chemical substance shall be used within the Commonwealth unless the user of a priority
156 chemical substance has submitted notification to the department in accordance with section
157 25(c).

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

160 (i) Manufacturers shall file a notice with the institute and the department identifying the
161 consumer product, the approximate number of units distributed in the Commonwealth, an
162 estimate of the amount or concentration of the priority chemical substance contained in each
163 unit, the purpose for including the priority chemical substance, and the name, address, and phone

164 number of a contact person, and other relevant information the department may require. The
165 department may allow a manufacturer, distributor or trade group to supply the information
166 required above for a consumer product category rather than an individual consumer product.
167 The manufacturer shall update and revise the notification whenever there is a significant change
168 in the information or when requested by the department.

169 (ii) Users of a priority chemical substance shall file notice with the institute and the
170 department identifying the name and address of each facility where the priority chemical
171 substance is manufactured, processed, or otherwise used, the mass of each priority chemical
172 substance manufactured, processed, or otherwise used, the purpose for using the priority
173 chemical substance, and the name, address, and phone number of a contact person, and other
174 relevant information the department may require. The user of a priority chemical substance shall
175 update and revise the notification whenever there is a significant change in the information or
176 when requested by the department. Large quantity toxics users and other toxics users within a
177 designated priority user segments already subject to reporting on a priority chemical substance
178 under section 10 shall be exempt from the requirements of this section for that priority chemical
179 substance.

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

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

184 (v) Distribution of information:

185 i. Public disclosure of confidential business information submitted to the institute and
186 the department pursuant to this section shall be governed by the requirements of section 10 of
187 chapter 66.

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

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

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

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

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

207 priority given to uses that adversely impact children, infants, developing fetuses, and workers,
208 and other vulnerable populations;

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

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

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

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

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

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

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

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

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

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

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

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

242 Section 26. (a) The institute shall present each completed safer alternatives
243 assessment report to the council. The council shall use the completed report to identify uses of
244 the priority chemical substance that pose a significant hazard to human health or the
245 environment, with highest priority given to uses that adversely impact children, infants,
246 developing fetuses, and workers, and other vulnerable populations. In identifying such uses of
247 the priority chemical substance, the council shall consider both uses of the priority chemical
248 substance itself as well as uses of consumer products that contain the priority chemical
249 substance. The council shall designate any such uses as priority chemical substance uses.

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

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

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

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

272 (ii) To accomplish the goals established in this section, a chemical action plan for a
273 priority chemical substance use with feasible alternatives shall:

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

276 (b) require substitution of a safer alternative;

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

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

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

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

290 (iv) The timetable for completing substitutions established in a chemical action plan
291 shall take into consideration the financial needs of the manufacturers and users of the priority
292 chemical substance.

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

297 (c) Where the council has not identified feasible safer alternatives for one or more
298 priority uses of a priority chemical substance, the chemical action plan shall: identify steps that
299 manufacturers and users of a priority chemical substance, state agencies and others shall take to
300 identify or develop a feasible safer alternative for the priority chemical substance use; shall
301 require manufacturers and users of priority chemical substances to reduce human exposure to
302 and environmental contamination from the priority chemical substance in that use; where
303 possible seek to strengthen Massachusetts business and develop job opportunities; and
304 coordinate state activities to accomplish this goal. In preparing the chemical action plan, the
305 department shall consult with the institute, the office, and other relevant state agencies and
306 authorities to develop a plan that coordinates the actions of these agencies and authorities to
307 achieve the plan's goal. The department shall consider the potential impacts to human health and
308 the environment of the continued and unmitigated use of the priority chemical substance. The
309 chemical action plan for priority uses of a priority chemical substance for which the council has
310 not identified a feasible safer alternative may include, but shall not be limited to, the following:

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

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

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

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

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

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

333 (ii). authorize the filing with the department of an application for a waiver of a
334 substitution deadline, certifying that there is no safer alternative that is technically or

335 economically feasible for a particular use of the substance; provided, however, that such waiver
336 application shall include:

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

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

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

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

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

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

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

356 final regulations) shall be approved by the council prior to promulgation of the regulations by the
357 department.

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

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

371 SECTION 7. Paragraph (B) of section 21 of chapter 21I of the General Laws as so
372 appearing in the 2008 Official Edition is hereby amended by inserting after the word “twenty”
373 the following words:

374 “or any person who violates any requirement of sections 24 through 28, inclusive,”

375 SECTION 8. Section 21 of chapter 21I of the General Laws as so appearing in the 2008
376 Official Edition is hereby amended by adding after subsection (C) the following subsection:

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

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

392 SECTION 10. Notwithstanding the provisions of any general or special law to the
393 contrary, the department of environmental protection, in consultation with the Toxic Use
394 Reduction Institute at the University of Massachusetts Lowell and the office of technical
395 assistance and technology within the executive office of environmental affairs, shall conduct a
396 study on alternative funding mechanisms for the safer alternatives in products program
397 established under chapter 21I of the general laws. The department shall report to the general
398 court the results of its investigation and study to the clerks of the house of representatives and

399 senate and the joint committee on environment, natural resources and agriculture on or before
400 June 30, 2012.

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

403 Section 11A. The department of environmental protection, in consultation with the Toxic
404 Use Reduction Institute at the University of Massachusetts at Lowell, shall prepare chemical
405 action plans for the following three (3) chemicals and specific uses: cadmium as found in
406 children's products, trichloroethylene as found in industrial degreasers, and nonylphenol
407 ethoxylates as found in household cleaning products.

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

414 To accomplish the goals established in this section, a chemical action plan for these three
415 chemical substance use with feasible alternatives shall:

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

418 (b) require substitution of a safer alternative;

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

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

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

425 In establishing deadlines and schedules for substituting safer alternatives under this
426 section, the department shall consider the potential impacts to human health and the environment
427 of the continued use of the priority chemical substance. If children or workers will continue to
428 be exposed to these three chemical substances during the period in which substitution is being
429 implemented, then the chemical action plan shall include measures a manufacturer or user of one
430 of these chemical substances, as appropriate, shall take to eliminate or reduce exposure of these
431 chemical substances to those populations.

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

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

438 Where the council has not identified feasible safer alternatives for a specified use of these
439 chemical substances, the chemical action plan shall: identify steps that manufacturers and users

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

452 (i). research into and development of safer alternatives to the use of these chemical
453 substances;

454 (ii). where appropriate, requirements for handling, storage or waste management, as
455 appropriate to reduce exposure to workers and consumers to the chemical substance in specified
456 use;

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

460 (iv). limitations on certain continued uses of the chemical substance in specific
461 applications.

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

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

473 (ii). authorize the filing with the department of an application for a waiver of a
474 substitution deadline, certifying that there is no safer alternative that is technically or
475 economically feasible for a particular use of the substance;

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

481 After the department has prepared a draft chemical action plan, including draft
482 regulations, the draft plan shall be published for public comment pursuant to chapter 30A. The

483 final chemical action plan shall contain the department's final regulations and shall be approved
484 by the council prior to promulgation of the regulations by the department.

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

493 SECTION 12. Sections 1 through 9 of this act shall be effective January 1, 2015.

494 SECTION 13. Sections 10 and 11 of this act shall be effective upon passage.