

HOUSE No. 757

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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 1. To provide for certain unanticipated obligations of the commonwealth, to provide for
2 an alteration of purpose for current appropriations and to meet certain requirements of law, the
3 sum set forth in this section is hereby appropriated from the General Fund unless specifically
4 designated otherwise in this act for the several purposes and subject to the conditions specified in
5 this act and subject to the laws regulating the disbursement of public funds for the fiscal year
6 ending 2010. Such sum shall be in addition to any amounts previously appropriated and made
7 available for the purposes of said item.

8 SECTION 2.

9 2020-0200 The secretary of energy and environmental affairs shall expend for the
10 purposes of carrying out this act, and amount not to exceed \$4,200,000 from funds raised
11 through the Safer Alternatives in products Fee ; provided that funds shall be expended for the
12 programs and duties of the office of technical assistance and the department of environmental
13 protection pertaining to this act, including business assistance and development, provided further
14 that the secretary may contract with the executive office of housing and economic development

15 in order to provide retraining benefits; and provided further that the department of environmental
16 protection shall annually file a report with the house and senate committees on ways and means
17 as well as with the joint committee on environment, natural resources and agriculture detailing
18 expenditures under this item in the preceding fiscal year.....\$4,200,000.

19 Annually, the secretary of energy and environmental affairs shall expend from funds
20 raised through the Safer Alternatives in Products Fee, an amount not to exceed \$4,200,000;
21 provided, that

22 provided further, that the next 26 per cent of the revenue collected, but not more than
23 \$1.560,000 per year, shall be allocated by the Administrative Council for activities considered
24 appropriate to carry out chemical action plans, grants for business assistance and worker
25 retraining;

26 provided further, that 25 per cent of revenue, but not more than \$1,500,000 per year, shall
27 be expended by the Office of Technical Assistance for activities related to safer alternatives to
28 toxic chemicals;

29 provided further, that the final 19 per cent of revenue, but not more than \$1,140,000 per
30 year, shall be expended by the Department of Environmental Protection for activities related to
31 safer alternatives to toxic chemicals;

32 and provided further, that the department of environmental protection shall annually file
33 a report with the house and senate committees on ways and means detailing the expenditures
34 under this item in the preceding fiscal year.

35 7100-0301 The state treasurer shall disburse 30 per cent, but not more than \$1,800,000,
36 from funds collected through the Safer Alternatives in Products Fee, for the Safer Alternatives
37 activities of the Toxics Use Reduction Institute at the University of Massachusetts at Lowell, a
38 portion of which may be subcontracted to the University of Massachusetts at Worcester and for
39 the University of Massachusetts at Amherst for assistance with assessment reports and toxics
40 research; provided further that the institute shall annually file a report detailing expenditures
41 under this item with the chairs of the house and senate committees on ways and means as well as
42 with the joint committee on environment, natural resources and
43 agriculture.....\$1,800,000

44 Annually, the state treasurer shall disburse from funds raised through the Safer
45 Alternatives in Products Fee, 30 per cent of the total, but not to exceed \$1,800,000, for the Safer
46 Alternatives activities of the Toxics Use Reduction Institute at the University of Massachusetts at
47 Lowell, a portion of which may be subcontracted to the University of Massachusetts at
48 Worcester and for the University of Massachusetts at Amherst for assistance with assessment
49 reports and toxics research.

50 SECTION 3. Section 2 of chapter 21I of the General Laws, as appearing in the 2006
51 Official Edition, is hereby amended by inserting after the definition of “Agency” the following
52 definition:“Alternative”, an activity, technology, material or method of equivalent function
53 which can be substituted for the use of a particular chemical.

54 SECTION 4. Said section 2 of said chapter 21I, as so appearing, is hereby further
55 amended by inserting after the definition of “Manufacture” the following definitions:--

56 “Manufacturer”, for the purposes of section 24 through 35 of this chapter, manufacturer
57 shall mean any person, firm, association, partnership, corporation, governmental entity,
58 organization, combination or joint venture which is last in the production or assembly process of
59 a new product, or in the case of an imported product, the importer or domestic distributor of the
60 products; provided that, if a company from who an importer or domestic distributor purchases
61 the merchandise has a presence or assets in the United States, that company shall be considered
62 the manufacturer and the distributor as defined in chapter 93B shall not be considered the
63 manufacturer.

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

66 “User of a priority toxic substance”, for sections 24 to 27 inclusive means a person or
67 legal entity that uses a priority toxic substance in manufacturing, products or services delivered,
68 sold or conducted within the Commonwealth

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

71 “Distributor” means any person or legal entity which distributes products to retail
72 establishments on a wholesale basis, and also includes any legal entity which owns retail
73 establishments and distributes such products to more than five retail establishments of its own
74 within the Commonwealth. Distribution or sales include, but are not limited to, transactions
75 conducted through sales outlets, catalogs or the internet, a product under its own brand or sales
76 of a product by others under their own brand or label.

77 SECTION 5. Said section 2 of said chapter 21I, as so appearing, is hereby further
78 amended by inserting after the definition of ““POTW (publicly-owned treatment works)
79 operators” the following 2 definitions:-

80 “Priority toxic substance”, a chemical substance designated by the council from the list
81 of chemicals of high concern, “Priority toxic substance use”, a use of a priority toxic substance
82 designated as such by the council pursuant to section 25.

83 SECTION 6. Said section 2 of said chapter 21I, as so appearing, is hereby further
84 amended by inserting after the definition of ““Resource conservation” the following 2
85 definitions:- “Safer alternative”, an option, including a change in toxic substance, material,
86 product, process, function, system or other action, to replace a toxic substance currently in use
87 and which would be effective in reducing the overall potential for harm to human health or the
88 environment. “Safer alternatives assessment report”, the alternatives assessment completed for
89 each priority toxic substance by the Institute.

90 SECTION 7. Said section 2 of said chapter 21I, as so appearing, is hereby further
91 amended by inserting after the definition of “State agency” the following definition:-
92 “Substitution”, the replacement or reduction of a hazardous substances by selecting a less
93 hazardous or nonhazardous substance or by changing a production process, product function or
94 design.

95 SECTION 8. Said section 2 of said chapter 21I, as so appearing, is hereby further
96 amended by striking out the definition of “Toxic or hazardous substance” and inserting in place
97 thereof the following definition:-“Toxic or hazardous substance”, a substance in any form which
98 is identified on the toxic or hazardous substance list established pursuant to section 9; provided,

99 however, that a toxic or hazardous substance shall not be subject to sections 1 to 23, inclusive,
100 when it is: (1) present in an article; (2) used as a structural component of a facility; (3) present in
101 a product used for routine janitorial or facility grounds maintenance; (4) present in food, drugs,
102 cosmetics or other personal items used by employees or other persons at a facility; (5) present in
103 a product used for the purpose of maintaining motor vehicles operated by a facility; (6) present in
104 process water or noncontact cooling water as drawn from the environment or from municipal
105 sources, or present in air used either as compressed air or as part of combustion; (7) present in a
106 pesticide or herbicide when used in agricultural applications (8) present in crude, lubricating or
107 fuel oils or other petroleum materials being held for direct wholesale or retail sale; or (9) present
108 in fuels used in combustion to produce electricity, steam or heat, except when production of
109 electricity, steam or heat is the primary business of a facility; and provided further, that a toxic or
110 hazardous substance shall not be subject to sections 24 to 28, inclusive, when it is: (1) present in
111 fuel oils or petroleum materials being held for direct wholesale or retail sale; (2) present in fuels
112 used in combustion to produce electricity, steam or heat; or (3) present as a naturally-occurring
113 substance in fuels and in emissions or byproducts as a result of the combustion of fuels 4)
114 present or used in the manufacturing of a product manufactured in Massachusetts by a contractor
115 or subcontractor pursuant to a contract with the Department of Defense or the Department of
116 Homeland Security.

117 SECTION 9. Section 3 of said chapter 21I, as so appearing, is hereby amended by
118 inserting after the word “reduction”, in line 61, the following words:- , substitution of safer
119 alternatives.

120 SECTION 10. Said section 3 of said chapter 21I, as so appearing, is hereby further
121 amended by striking out paragraph (J) and inserting in place thereof the following paragraph:-(J)

122 The office of technical assistance shall establish technical assistance grants to organizations of
123 consumers or workers focused on the impact of substitutions of safer alternatives in specific
124 sections. The grants may include assistance in securing information on technologies and their
125 impact on workers, consumers and the environment; hiring independent technical support
126 regarding technologies, processes and work organization; and paying for training programs to
127 assist affected groups in analyzing the changes.

128 SECTION 11. Section 4 said chapter 21I, as so appearing, is hereby amended by adding
129 the following paragraph f, in line 57, by inserting after the word “organization.” the following
130 words:--the advisory committee may provide comment to the administrative council on all
131 aspects of the safer alternatives program, including comments relative to chemical action plans,
132 safer alternatives assessment reports, and the composition of the chemical list created in
133 paragraph (a) of section 24. All such official comment shall be considered a matter of public
134 record. The advisory committee may recommend substances to be selected by the council for
135 assessment. If the administrative council rejects this recommendation, the council shall provide a
136 written statement to the advisory committee and to the house and senate committees on ways and
137 means and to the house and senate chairs of the joint committee on environment, natural
138 resources and agriculture, communicating the reasons for the rejection thereby.

139 SECTION 12. Said chapter 21I is hereby further amended by inserting after section 6 the
140 following section:-Section 6A. (a) In addition to any other requirements of this chapter, the
141 institute shall seek to reduce the presence of toxic or hazard substances in products manufactured
142 for use and sale in the commonwealth by promoting safer alternatives to such substances. The
143 institute may develop recognition programs to promote the priority toxic substance reduction
144 achievements of industry and communities. The institute may establish fees for its safer

145 alternatives programs. When feasible, the institute shall coordinate the programs and
146 responsibilities relative to the substitution of safer alternatives for priority toxic substances with
147 those programs and responsibilities described in this chapter. (b) Through such programs, the
148 institute may:(1) provide general information about toxic or hazardous substances and actively
149 publicize the advantages of and developments in safer alternatives and the requirements of this
150 chapter, which shall include, but not be limited to, providing information about public health,
151 environmental and economic issues associated with toxics use and toxics use reduction;(2)
152 establish courses, seminars, conferences and other events and provide reports, updates, guides
153 and other publications and other means of providing technical information for consumers and, as
154 appropriate, work in coordination with the office;(3) develop and provide curriculum and
155 training for higher education students and faculty on priority toxic substances and potential safer
156 alternatives;(4) sponsor or engage in research to identify potential priority toxic substances and
157 potential safer alternatives to such substances;(5) sponsor research or pilot projects to develop
158 and demonstrate innovative technologies for implementing safer alternatives to priority toxic
159 substances;(6) subject to appropriation, develop in consultation with the department and office, a
160 safer alternatives curriculum and training program to supplement the toxics use reduction planner
161 training program; and(7) subject to appropriation, provide safer alternatives implementation
162 training and assistance to citizens, community groups, nonprofit organizations and institutions,
163 workers, labor representatives, businesses, product supply chains and state and local government
164 boards and officials; provided, however, that such training and assistance shall provide such
165 individuals and groups with an understanding of the public health and environmental impacts of
166 the presence of toxic or hazardous substances, the methods and strategies for substituting safer
167 alternatives for priority toxic substances and the requirements of this chapter.

168 (c) No later than July 1, 2010, the Institute shall publish a chemicals categorization list
169 for chemicals commonly used in Massachusetts industry or in products sold in Massachusetts.
170 The institute will rely on the Science Advisory Board to categorize chemicals on the chemicals
171 categorization list into one of four categories: chemicals of high concern, chemicals of concern,
172 chemicals of unknown concern, and chemicals of low concern. In preparing this categorization
173 the Science Advisory Board will rely on published government lists of chemical categorizations
174 such as, but not limited to, the Canadian Domestic Substances List Categorization, the European
175 Commission’s list of substances of very high concern, Washington State’s list of persistent,
176 bioaccumulative and toxic chemicals, the International Agency for Research on Cancer’s list of
177 carcinogens. However, the chemicals of high concern category must include those chemicals
178 recognized as carcinogens, mutagens and reproductive toxins; chemicals recognized as
179 persistent, bioaccumulative and toxic chemicals; chemicals recognized as very persistent and
180 very bioaccumulative chemicals; chemicals recognized as endocrine disruptors; and other
181 chemicals of equivalent concern. The institute may create subcategories within these four
182 categories. These categories may be adjusted to take account of current chemical lists and
183 additional information, including information on emerging materials. At periodic points, but at
184 least every 4 years, and within 4 years after publication of the list, the institute and the Science
185 Advisory Board shall refine the list to incorporate new scientific information and data, and
186 publish a refined version of the list.

187 SECTION 13. Section 7 of said chapter 21I, as appearing in the 2006 Official Edition, is
188 hereby amended by adding the following 2 paragraphs:-

189 (K). The Office of Technical Assistance shall oversee an “Assist Business to Compete
190 Fund” (the ABC Fund) facilitating transitions to safer alternatives to toxic chemicals and

191 business development opportunities in manufacturing safer alternatives and products containing
192 safer alternatives. In developing the program, the Office shall determine where business
193 assistance and financial investment can be most effectively used to protect public health and
194 strengthen the Commonwealth's economy by focusing on application and promotion of safer
195 alternatives.

196 The office of technical assistance shall provide technical assistance to businesses for
197 developing and implementing safer alternatives consistent with sections 6 and 7 of this chapter
198 and including

199 direct grants and loans to businesses for costs required to implement safer alternatives

200 technical support focused on individual companies or user sectors;

201 technical assistance in assessing safer alternatives and assistance with forming

202 consortiums to assess and develop safer alternatives

203 market development programs, to create demand for safer alternatives;

204 seminars and workshops to assist businesses in adopting safer substitutes; and

205 publications focused on particular user sectors.

206 The ABC Fund shall be developed with assistance and collaboration with the department
207 of labor and industries, department of economic development, the office of technical assistance
208 of the executive office of environmental affairs, department of labor and workforce development,
209 and the institute.(L) The office shall work with the institute, in consultation with the
210 implementing agencies to establish an innovative business leaders program to encourage early
211 substitution of high hazard and priority toxic substances. The program shall assist users of

212 chemicals of high concern and priority toxic substances to complete substitution plans. The
213 program may include priority targeted financial and technical assistance and support for
214 research, information gathering and implementation.

215 SECTION 14. Said chapter 21I is hereby amended by adding the following 5
216 sections:Section 24. (a) Annually, the council shall identify, on the basis of available funds,
217 available institute resources, 2 to 5 priority toxic substances from the list of chemicals of high
218 concern, and direct the institute to prepare and publish a safer alternatives assessment report that
219 evaluates the availability of safer alternatives for each selected substance. In identifying priority
220 toxic substances, the council shall prioritize substances that adversely impact human health with
221 highest priority given to preventing adverse impacts on children, infants, developing fetuses, and
222 workers, and other vulnerable populations. In selecting priority toxic substances the council may
223 consider opportunities that strengthen the Commonwealth's economy.

224 The council, in consultation with the institute, shall establish a schedule for the
225 development of each safer alternatives assessment report.(b) For each safer alternatives
226 assessment report, the institute shall:(1) identify the uses and functions of the priority toxic
227 substance and select a subset of uses and functions for further study based on uses in products
228 and facilities and other relevant factors that are consistent with the criteria set forth in Section 24
229 (a)

230 (2) identify whether alternatives are available for the selected uses and functions of the
231 priority substance;(3) identify whether any of the existing uses of the substance are of a clearly
232 unnecessary nature; (4) research and study relevant factors to characterize feasible alternatives;
233 (5) provide a qualitative discussion of the economic viability, opportunities or costs associated

234 with adopting and implementing any safer alternatives; provided, however, that such discussion
235 may include a qualitative characterization of the economic impacts and benefits of substitution
236 the extent of human exposure to the priority toxic substance that could be eliminated through
237 substitution or other actions and potential public health benefits or reductions in health care
238 costs ; (6) identify uses of substances that do not currently have a feasible safer alternative
239 available and make recommendations for promoting research and development of such
240 alternatives; and(7) use the chemicals categorization list and other lists, including government
241 lists of substances used in industry or in consumer products, in order to identify potential safer
242 alternatives. (c) The institute shall seek comments from the science advisory board, the advisory
243 committee and members of the public, including all regions of the commonwealth, in developing
244 each safer alternatives assessment report. (d) The institute shall publish the results of the safer
245 alternatives assessment report for each substance assessed.(e) Following publication of a safer
246 alternatives assessment report for a selected priority toxic substance, the institute shall review its
247 findings with the advisory committee and the council on a periodic basis, but not less than once
248 every 5 years, and shall revise such report as necessary to update it and to address new
249 recommendations. Revised reports shall be made available to the public for comment, and final
250 revised reports shall be published.(f) In the event that a substance to be assessed is a pesticide,
251 the institute shall contract with resources at the University of Massachusetts at Amherst,
252 including the Cooperative Extension Service, for assistance and guidance in assessing
253 agricultural uses of such substance.(g) In the event that a substance to be assessed is used for
254 medical purposes, the institute shall contract with resources at the University of Massachusetts at
255 Worcester for assistance and guidance in assessing medical uses of such substance.

256 (h) No later than 120 days following the designation by the Council of a priority toxic
257 substance, any person or legal entity that manufactures or distributes a product in the
258 Commonwealth which the manufacturer or distributor knows or has reason to suspect to contain
259 a priority toxic substance shall file a notice with the department identifying the product, the
260 approximate number of units distributed in the Commonwealth, an estimate of the amount or
261 concentration of the priority toxic substance contained in each unit, if known, purpose for
262 including the priority toxic substance, the name and address of the manufacturer, and the name,
263 address, and phone number of a contact person. The department shall prescribe a notification
264 form for such notices to be filed, and a means of filing such notices electronically. The
265 department shall establish procedures to assure compliance and penalties for noncompliance. In
266 addition the department shall establish a de minimis threshold for priority toxic substance
267 content in a product below which this provision does not apply

268 (i) Distribution of information. Public disclosure of confidential business information
269 submitted to the department pursuant to this section shall be governed by the requirements of
270 section 10 of chapter 66 of the general laws.

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

274 (iii) With the approval of the department, a manufacturer, distributor or trade group may
275 supply the information required above for a product category rather than an individual product.
276 The submitter shall update and revise the information in the notification whenever there is
277 significant change in the information or when requested by the department.

278 Section 25. (a) Based upon each completed safer alternatives assessment report, the
279 council shall designate priority toxic substance uses if the safer alternatives assessment report
280 concludes that an assessed substance poses a significant hazard of harm to human health or the
281 environment and that safer alternatives can be feasibly substituted for specific uses of such
282 substance. (b) Not later than 1 year after the council identifies priority toxic substance uses, the
283 department, in consultation with the institute, office of technical assistance, and the advisory
284 committee, shall complete a chemical action plan for that substance, focusing on priority uses,
285 including uses in products. The goal of the chemical action plan shall be to coordinate state
286 agency activities and to require users of priority toxic substances to act as expeditiously as
287 possible to ensure substitution of the priority toxic substances with safer alternatives, while also
288 where possible seeking to strengthen Massachusetts business, and develop job opportunities. The
289 chemical action plan shall identify specific actions that users of priority toxic substances shall be
290 required to implement, on a schedule to be established in the plan, to: (i) substitute a safer
291 alternative for the priority toxic substance in specific uses when feasible; and (ii) reduce human
292 exposure to and environmental contamination from such substance. Substitution of a safer
293 alternative shall be required whenever the safer alternatives assessment report determines that
294 there are safer alternatives that are feasible for specific uses of a priority toxic substance use.
295 Efforts to reduce human exposure and environmental contamination shall be required where the
296 department determines that appropriate safer alternatives are not available. (c) In preparing the
297 chemical action plan, the department shall consider the potential impacts to human health and the
298 environment of the continued use of the priority toxic substance. The chemical action plan shall
299 include: (1) schedules, timelines and deadlines for achieving substitution of the priority toxic
300 substance with safer alternatives, for specified priority uses;

301 (2) identification of department and other state agency regulations that shall be required
302 to ensure substitution of the priority toxic substance in products and used by toxics users, and to
303 implement other agency actions identified in the chemical action plan.

304 (3) in cases where safer alternatives are feasible, but require significant and prohibitive
305 costs to business, such as capital expenditure or training, the chemical action plan shall include a
306 targeted ABC Fund program. The chemical action plan shall set a timetable for completing
307 substitutions as expeditiously as possible, taking into consideration the financial needs of the
308 users.(4) identification of other state agency actions that should be implemented to reduce human
309 exposure to the priority toxic substance in a particular use and to reduce the potential for
310 environmental contamination from such substance; provided, however, that such actions may
311 include, but shall not be limited to:(i) technical assistance to product manufacturers and users;

312 (ii) substitution planning requirements on users;

313 (iii) research and development into safer alternatives to the use of a priority toxic
314 substance;(iv) product labeling and other notification to users that a product contains a priority
315 toxic substance and advice on the proper handling and disposal to minimize human exposure to
316 the priority toxic substance;(v) registering the use of a priority toxic substance with the
317 department;(vi) limitations on certain continued uses of the priority toxic substance to specific
318 applications; and(vii) incorporation of reduction measures in toxic use reduction plans submitted
319 to the department pursuant to section 11; and(d) After the department has developed a chemical
320 action plan, it shall be presented to the council for adoption; provided, however, that the council
321 shall seek public comment on each plan and, within 6 months, adopt a plan. Upon adoption of a
322 chemical action plan by the council, all state agencies shall take any required implementing

323 actions as set forth in the chemical action plan and this chapter. (e) Based on a chemical action
324 plan as adopted by the council, the department shall, promulgate regulations to restrict the use of
325 priority toxic substances for specified uses and within consumer products. Such regulations shall
326 establish a substitution deadline, substitution planning requirements for specific of each priority
327 toxic substance use, and specify acceptable alternatives.

328 Section 26. In implementing the chemical action plan, the department shall:

329 (1) require toxics users and other persons to file with the department a certification of
330 compliance with any substitution or other requirement promulgated by the department, or(2)
331 authorize the filing with the department of an application to use an alternative substance that has
332 not been identified as an acceptable alternative, documenting with toxicity and exposure data
333 how the proposed alternative substance would ensure protection of health and the environment
334 and, in response to such request, the department shall determine whether such alternative is
335 acceptable, or (3) authorize the filing with the department of an application for a waiver of a
336 substitution deadline, certifying that there is no safer alternative that is technically or
337 economically feasible for a particular use of the substance; provided, however, that such waiver
338 application shall include:

339 (i) identification of the specific use of the priority toxic substance for which a waiver is
340 sought;(ii) identification of all alternatives considered and their cost and feasibility
341 considerations;(iii) the basis for finding that there is no feasible safer alternative;(iv)
342 documentation of any efforts to be taken to minimize the use of the priority toxic substance and
343 of human and environmental exposures to such substance until safer alternatives are found and

344 implemented; and(v) the steps the applicant shall take to identify safer alternatives in the
345 following 3 years;

346 In granting such waivers, the department shall, in consultation with the department of
347 public health and the department of economic development, consider whether: (i) there is a need
348 for the use of the substance; (ii) there is no safer alternative feasibly available, (iii) the
349 availability of ABC Fund assistance to the applicant and (iv) the impact on the economic
350 viability of Massachusetts businesses. Waivers shall not be granted for more than 3 years.(d)
351 This section shall apply to a person who manufactures, sells, offers for sale or distributes
352 products containing a priority toxic substance in the commonwealth.(e) Within the time of a
353 substitution deadline established by the department, the department shall require any regulated
354 entity to certify that substitution of the substance has been completed.Section 27. Certain
355 functions provided for in this chapter may be transferred to or carried out in cooperation with an
356 interstate entity. The interstate entity may, among other functions: compile and categorize
357 chemical lists, produce alternatives assessment reports; develop model chemical action plans and
358 house product or chemical use registries. The department may promulgate regulations to carry
359 out this section. Section 28. (a) Except as otherwise provided in subsection (b), violations of
360 sections 24 to 26, inclusive, may be punished by a fine of not more than \$25,000 per day for each
361 day a violation exists. In addition, the department may prohibit the sale or distribution of
362 products when a distributor or manufacturer has failed to comply with this chapter.(b) End users
363 of consumer products shall not be subject to enforcement action under subsection (a).

364 SECTION 15. Notwithstanding any general or special law to the contrary, an employer
365 separating one or more individuals from employment as a result of this act shall notify the
366 Department at the time of separation. The local Workforce Investment Board shall work with the

367 Rapid Response Team set aside program within the Department of Workforce Development to
368 determine a separated individuals eligibility for benefits under the set aside program. The Rapid
369 Response Team shall establish criteria to determine eligibility for benefits under the set aside
370 program. Any individual deemed eligible for benefits under this act shall be entitled to receive re
371 training, subject to the approval of the Rapid Response Team, sufficient to qualify the individual
372 to re employment at a wage not less than the wage he or she was receiving at the time of
373 separation from employment. Any individual deemed eligible for re training benefits under this
374 act shall also be eligible to receive unemployment benefits during the entire period that he or she
375 remains enrolled in and in compliance with the requirements of, any such approved retraining
376 program.

377 SECTION 16. The TURA Administrative Council shall, in consultation with the
378 Department of Environmental Protection, develop a Safer Alternatives in Products Fee, separate
379 from the Toxics Use Fee structure for large quantity toxics users. This fee shall be placed on
380 wholesale sellers or distributors of products containing priority toxic substances to entities in
381 Massachusetts, whether or not such wholesale sellers or distributors are located within the
382 Commonwealth. The fee shall initially be set at a level sufficient to raise \$2.0 million in the year
383 following enactment of this law, \$4.0 million in the second year after the enactment of this law,
384 \$6.0 million the third year and at least \$6.0 million in each subsequent year thereafter. The fee
385 shall be adjusted every three years to reflect changes in the Consumer Price Index. 75% of the
386 fee shall be collected from larger distributors and 25% from smaller distributors, based on
387 criteria the council shall establish. In addition the department shall establish a de minimis
388 threshold for products, services and toxic substances below which no fee shall be assessed.

389 SECTION 17. The report required to be submitted by the administrative council on
390 toxics use reduction to the clerks of the senate and house of representatives and the house and
391 senate chairs of the joint committee on environment, natural resources and agriculture pursuant
392 to Paragraph (H) of section 4 of chapter 21I of the General Laws shall be filed not later than
393 January 1, 2011.

394 SECTION 18. The safer alternatives curriculum and training program required to be
395 established pursuant to clause (6) of subsection (b) of section 6A of chapter 21I of the General
396 Laws shall be established not later than July 1, 2009.

397 SECTION 19. Nothing in this act shall require actions which are preempted by federal
398 law. Nothing in this act shall require the adoption of occupational safety and health standards or
399 the issuance of orders on an occupational safety and health matter on which the federal
400 Occupational Safety and Health Administration has established a standard. Nothing in this
401 chapter shall convey rights to discharge priority toxic substances into the environment, to cause
402 potential harm to individuals or the environment or to create a nuisance. Nothing in this chapter
403 shall limit the authority of local governments to restrict or prohibit the use or discharge of toxic
404 substances. Any product containing a priority toxic substance for which federal law governs
405 notice in a manner that affects state authority to act with respect to that product shall be exempt
406 from the requirements of this act to the extent required to satisfy the limits imposed by the
407 federal law with respect to state action regarding the product.