

SENATE No. 442

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

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

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

10 Whereas the General Court finds that:

11 With regard to many other toxic substances, the current regulatory system has failed to
12 protect health and environment due to fundamental flaws, namely that it places high burdens on

13 government to act, primarily after the damage is done rather than by prevention through seeking
14 the safest alternatives to toxics as they become available;

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

19 That Massachusetts is already a leader on environmental health policy with regard to
20 toxics as a result of the Toxics Use Reduction Act (TURA), which shows that there are many
21 benefits to businesses and the economy from implementing safer alternatives for toxic chemicals;
22 however that such act has failed to address the broader need to substantially reduce the use of
23 harmful chemicals in products used in workplaces and homes even though safer alternatives are
24 often available;

25 That the European Union and other countries have already adopted more restrictive
26 policies regarding the use of toxic chemicals and more health protective requirements for
27 products, and over 37% of Massachusetts trade is with the European Union's Member States,
28 and;

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

33 That investing in Massachusetts businesses to assist them in developing and instituting
34 safer alternatives will make Massachusetts a global leader in sustaining an innovative economy

35 based on research, development and production of new materials, products and processes that
36 strengthen our economy while protecting our health and environment;

37 Therefore, it is the policy of the Commonwealth to ensure the substitution in the use,
38 manufacture, emission and distribution of each of the priority toxic substances, and in consumer
39 products containing the substances, with the safest feasible alternatives.

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

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

49 SECTION 2. 2020-0200 The secretary of energy and environmental affairs shall expend
50 for the purposes of carrying out this act, and amount not to exceed \$4,200,000 from funds raised
51 through the Safer Alternatives in products Fee ; provided that funds shall be expended for the
52 programs and duties of the office of technical assistance and the department of environmental
53 protection pertaining to this act, including business assistance and development, provided further
54 that the secretary may contract with the executive office of housing and economic development
55 in order to provide retraining benefits; and provided further that the department of environmental
56 protection shall annually file a report with the house and senate committees on ways and means

57 as well as with the joint committee on environment, natural resources and agriculture detailing
58 expenditures under this item in the preceding fiscal year.....\$4,200,000.

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

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

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

69 • provided further, that the final 19 per cent of revenue, but not more than
70 \$1,140,000 per year, shall be expended by the Department of Environmental Protection for
71 activities related to safer alternatives to toxic chemicals;

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

75 7100-0301 The state treasurer shall disburse 30 per cent, but not more than \$1,800,000,
76 from funds collected through the Safer Alternatives in Products Fee, for the Safer Alternatives
77 activities of the Toxics Use Reduction Institute at the University of Massachusetts at Lowell, a

78 portion of which may be subcontracted to the University of Massachusetts at Worcester and for
79 the University of Massachusetts at Amherst for assistance with assessment reports and toxics
80 research; provided further that the institute shall annually file a report detailing expenditures
81 under this item with the chairs of the house and senate committees on ways and means as well as
82 with the joint committee on environment, natural resources and
83 agriculture.....\$1,800,000

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

90 SECTION 3. Section 2 of chapter 21I of the General Laws, as appearing in the 2006
91 Official Edition, is hereby amended by inserting after the definition of “Agency” the following
92 definition:

93 “Alternative”, an activity, technology, material or method of equivalent function which
94 can be substituted for the use of a particular chemical.

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

97 “Manufacturer”, for the purposes of section 24 through 35 of this chapter, manufacturer
98 shall mean any person, firm, association, partnership, corporation, governmental entity,
99 organization, combination or joint venture which is last in the production or assembly process of

100 a new product, or in the case of an imported product, the importer or domestic distributor of the
101 products; provided that, if a company from who an importer or domestic distributor purchases
102 the merchandise has a presence or assets in the United States, that company shall be considered
103 the manufacturer and the distributor as defined in chapter 93B shall not be considered the
104 manufacturer.

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

107 "User of a priority toxic substance", for sections 24 to 27 inclusive means a person or
108 legal entity that uses a priority toxic substance in manufacturing, products or services delivered,
109 sold or conducted within the Commonwealth

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

112 "Distributor" means any person or legal entity which distributes products to retail
113 establishments on a wholesale basis, and also includes any legal entity which owns retail
114 establishments and distributes such products to more than five retail establishments of its own
115 within the Commonwealth. Distribution or sales include, but are not limited to, transactions
116 conducted through sales outlets, catalogs or the internet, a product under its own brand or sales
117 of a product by others under their own brand or label.

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

121 “Priority toxic substance”, a chemical substance designated by the council from the list of
122 chemicals of high concern,

123 “Priority toxic substance use”, a use of a priority toxic substance designated as such by
124 the council pursuant to section 25.

125 SECTION 6. Said section 2 of said chapter 21I, as so appearing, is hereby further
126 amended by inserting after the definition of “Resource conservation” the following 2
127 definitions:-

128 “Safer alternative”, an option, including a change in toxic substance, material, product,
129 process, function, system or other action, to replace a toxic substance currently in use and which
130 would be effective in reducing the overall potential for harm to human health or the environment.

131 “Safer alternatives assessment report”, the alternatives assessment completed for each
132 priority toxic substance by the Institute.

133 SECTION 7. Said section 2 of said chapter 21I, as so appearing, is hereby further
134 amended by inserting after the definition of “State agency” the following definition:-

135 “Substitution”, the replacement or reduction of a hazardous substances by selecting a less
136 hazardous or nonhazardous substance or by changing a production process, product function or
137 design.

138 SECTION 8. Said section 2 of said chapter 21I, as so appearing, is hereby further
139 amended by striking out the definition of “Toxic or hazardous substance” and inserting in place
140 thereof the following definition:-

141 Toxic or hazardous substance”, a substance in any form which is identified on the toxic
142 or hazardous substance list established pursuant to section 9; provided, however, that a toxic or
143 hazardous substance shall not be subject to sections 1 to 23, inclusive, when it is: (1) present in
144 an article; (2) used as a structural component of a facility; (3) present in a product used for
145 routine janitorial or facility grounds maintenance; (4) present in food, drugs, cosmetics or other
146 personal items used by employees or other persons at a facility; (5) present in a product used for
147 the purpose of maintaining motor vehicles operated by a facility; (6) present in process water or
148 noncontact cooling water as drawn from the environment or from municipal sources, or present
149 in air used either as compressed air or as part of combustion; (7) present in a pesticide or
150 herbicide when used in agricultural applications (8) present in crude, lubricating or fuel oils or
151 other petroleum materials being held for direct wholesale or retail sale; or (9) present in fuels
152 used in combustion to produce electricity, steam or heat, except when production of electricity,
153 steam or heat is the primary business of a facility; and provided further, that a toxic or hazardous
154 substance shall not be subject to sections 24 to 28, inclusive, when it is: (1) present in fuel oils or
155 petroleum materials being held for direct wholesale or retail sale; (2) present in fuels used in
156 combustion to produce electricity, steam or heat; or (3) present as a naturally-occurring
157 substance in fuels and in emissions or byproducts as a result of the combustion of fuels 4)
158 present or used in the manufacturing of a product manufactured in Massachusetts by a contractor
159 or subcontractor pursuant to a contract with the Department of Defense or the Department of
160 Homeland Security.

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

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

166 (J) The office of technical assistance shall establish technical assistance grants to
167 organizations of consumers or workers focused on the impact of substitutions of safer
168 alternatives in specific sections. The grants may include assistance in securing information on
169 technologies and their impact on workers, consumers and the environment; hiring independent
170 technical support regarding technologies, processes and work organization; and paying for
171 training programs to assist affected groups in analyzing the changes.

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

183 SECTION 12. Said chapter 21I is hereby further amended by inserting after section 6 the
184 following section:-

185 Section 6A. (a) In addition to any other requirements of this chapter, the institute shall
186 seek to reduce the presence of toxic or hazard substances in products manufactured for use and
187 sale in the commonwealth by promoting safer alternatives to such substances. The institute may
188 develop recognition programs to promote the priority toxic substance reduction achievements of
189 industry and communities. The institute may establish fees for its safer alternatives programs.
190 When feasible, the institute shall coordinate the programs and responsibilities relative to the
191 substitution of safer alternatives for priority toxic substances with those programs and
192 responsibilities described in this chapter.

193 (b) Through such programs, the institute may:

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

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

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

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

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

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

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

217 (c) No later than July 1, 2010, the Institute shall publish a chemicals categorization list
218 for chemicals commonly used in Massachusetts industry or in products sold in Massachusetts.
219 The institute will rely on the Science Advisory Board to categorize chemicals on the chemicals
220 categorization list into one of four categories: chemicals of high concern, chemicals of concern,
221 chemicals of unknown concern, and chemicals of low concern. In preparing this categorization
222 the Science Advisory Board will rely on published government lists of chemical categorizations
223 such as, but not limited to, the Canadian Domestic Substances List Categorization, the European
224 Commission's list of substances of very high concern, Washington State's list of persistent,
225 bioaccumulative and toxic chemicals, the International Agency for Research on Cancer's list of
226 carcinogens. However, the chemicals of high concern category must include those chemicals

227 recognized as carcinogens, mutagens and reproductive toxins; chemicals recognized as
228 persistent, bioaccumulative and toxic chemicals; chemicals recognized as very persistent and
229 very bioaccumulative chemicals; chemicals recognized as endocrine disruptors; and other
230 chemicals of equivalent concern. The institute may create subcategories within these four
231 categories. These categories may be adjusted to take account of current chemical lists and
232 additional information, including information on emerging materials. At periodic points, but at
233 least every 4 years, and within 4 years after publication of the list, the institute and the Science
234 Advisory Board shall refine the list to incorporate new scientific information and data, and
235 publish a refined version of the list.

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

238 (K). The Office of Technical Assistance shall oversee an “Assist Business to Compete
239 Fund” (the ABC Fund) facilitating transitions to safer alternatives to toxic chemicals and
240 business development opportunities in manufacturing safer alternatives and products containing
241 safer alternatives. In developing the program, the Office shall determine where business
242 assistance and financial investment can be most effectively used to protect public health and
243 strengthen the Commonwealth’s economy by focusing on application and promotion of safer
244 alternatives.

245 The office of technical assistance shall provide technical assistance to businesses for
246 developing and implementing safer alternatives consistent with sections 6 and 7 of this chapter
247 and including

- 248 1. direct grants and loans to businesses for costs required to implement safer
249 alternatives
- 250 2. technical support focused on individual companies or user sectors;
- 251 3. technical assistance in assessing safer alternatives and assistance with forming
252 consortiums to assess and develop safer alternatives
- 253 4. market development programs, to create demand for safer alternatives;
- 254 5. seminars and workshops to assist businesses in adopting safer substitutes; and
- 255 6. publications focused on particular user sectors.

256 The ABC Fund shall be developed with assistance and collaboration with the department
257 of labor and industries, department of economic development, the office of technical assistance
258 of the executive office of environmental affairs, department of labor and workforce development,
259 and the institute.

260 (L) The office shall work with the institute, in consultation with the implementing
261 agencies to establish an innovative business leaders program to encourage early substitution of
262 high hazard and priority toxic substances. The program shall assist users of chemicals of high
263 concern and priority toxic substances to complete substitution plans. The program may include
264 priority targeted financial and technical assistance and support for research, information
265 gathering and implementation.

266 SECTION 14. Said chapter 21I is hereby amended by adding the following 5 sections:

267 Section 24. (a) Annually, the council shall identify, on the basis of available funds,
268 available institute resources, 2 to 5 priority toxic substances from the list of chemicals of high
269 concern, and direct the institute to prepare and publish a safer alternatives assessment report that
270 evaluates the availability of safer alternatives for each selected substance. In identifying priority
271 toxic substances, the council shall prioritize substances that adversely impact human health with
272 highest priority given to preventing adverse impacts on children, infants, developing fetuses, and
273 workers, and other vulnerable populations. In selecting priority toxic substances the council may
274 consider opportunities that strengthen the Commonwealth's economy.

275 The council, in consultation with the institute, shall establish a schedule for the
276 development of each safer alternatives assessment report.

277 (b) For each safer alternatives assessment report, the institute shall:

278 (1) identify the uses and functions of the priority toxic substance and select a subset of
279 uses and functions for further study based on uses in products and facilities and other relevant
280 factors that are consistent with the criteria set forth in Section 24 (a)

281 (2) identify whether alternatives are available for the selected uses and functions of the
282 priority substance;

283 (3) identify whether any of the existing uses of the substance are of a clearly unnecessary
284 nature;

285 (4) research and study relevant factors to characterize feasible alternatives;

286 (5) provide a qualitative discussion of the economic viability, opportunities or costs
287 associated with adopting and implementing any safer alternatives; provided, however, that such

288 discussion may include a qualitative characterization of the economic impacts and benefits of
289 substitution the extent of human exposure to the priority toxic substance that could be eliminated
290 through substitution or other actions and potential public health benefits or reductions in health
291 care costs ;

292 (6) identify uses of substances that do not currently have a feasible safer alternative
293 available and make recommendations for promoting research and development of such
294 alternatives; and

295 (7) use the chemicals categorization list and other lists, including government lists of
296 substances used in industry or in consumer products, in order to identify potential safer
297 alternatives.

298 (c) The institute shall seek comments from the science advisory board, the advisory
299 committee and members of the public, including all regions of the commonwealth, in developing
300 each safer alternatives assessment report.

301 (d) The institute shall publish the results of the safer alternatives assessment report for
302 each substance assessed.

303 (e) Following publication of a safer alternatives assessment report for a selected priority
304 toxic substance, the institute shall review its findings with the advisory committee and the
305 council on a periodic basis, but not less than once every 5 years, and shall revise such report as
306 necessary to update it and to address new recommendations. Revised reports shall be made
307 available to the public for comment, and final revised reports shall be published.

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

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

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

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

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

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

336 Section 25. (a) Based upon each completed safer alternatives assessment report, the
337 council shall designate priority toxic substance uses if the safer alternatives assessment report
338 concludes that an assessed substance poses a significant hazard of harm to human health or the
339 environment and that safer alternatives can be feasibly substituted for specific uses of such
340 substance.

341 (b) Not later than 1 year after the council identifies priority toxic substance uses, the
342 department, in consultation with the institute, office of technical assistance, and the advisory
343 committee, shall complete a chemical action plan for that substance, focusing on priority uses,
344 including uses in products. The goal of the chemical action plan shall be to coordinate state
345 agency activities and to require users of priority toxic substances to act as expeditiously as
346 possible to ensure substitution of the priority toxic substances with safer alternatives, while also
347 where possible seeking to strengthen Massachusetts business, and develop job opportunities. The
348 chemical action plan shall identify specific actions that users of priority toxic substances shall be
349 required to implement, on a schedule to be established in the plan, to: (i) substitute a safer

350 alternative for the priority toxic substance in specific uses when feasible; and (ii) reduce human
351 exposure to and environmental contamination from such substance.

352 Substitution of a safer alternative shall be required whenever the safer alternatives
353 assessment report determines that there are safer alternatives that are feasible for specific uses of
354 a priority toxic substance use. Efforts to reduce human exposure and environmental
355 contamination shall be required where the department determines that appropriate safer
356 alternatives are not available.

357 (c) In preparing the chemical action plan, the department shall consider the potential
358 impacts to human health and the environment of the continued use of the priority toxic
359 substance. The chemical action plan shall include:

360 (1) schedules, timelines and deadlines for achieving substitution of the priority toxic
361 substance with safer alternatives, for specified priority uses;

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

365 (3) in cases where safer alternatives are feasible, but require significant and prohibitive
366 costs to business, such as capital expenditure or training, the chemical action plan shall include a
367 targeted ABC Fund program. The chemical action plan shall set a timetable for completing
368 substitutions as expeditiously as possible, taking into consideration the financial needs of the
369 users.

370 (4) identification of other state agency actions that should be implemented to reduce
371 human exposure to the priority toxic substance in a particular use and to reduce the potential for
372 environmental contamination from such substance; provided, however, that such actions may
373 include, but shall not be limited to:

374 (i) technical assistance to product manufacturers and users;

375 (ii) substitution planning requirements on users;

376 (iii) research and development into safer alternatives to the use of a priority toxic
377 substance;

378 (iv) product labeling and other notification to users that a product contains a priority toxic
379 substance and advice on the proper handling and disposal to minimize human exposure to the
380 priority toxic substance;

381 (v) registering the use of a priority toxic substance with the department;

382 (vi) limitations on certain continued uses of the priority toxic substance to specific
383 applications; and

384 (vii) incorporation of reduction measures in toxic use reduction plans submitted to the
385 department pursuant to section 11; and

386 (d) After the department has developed a chemical action plan, it shall be presented to
387 the council for adoption; provided, however, that the council shall seek public comment on each
388 plan and, within 6 months, adopt a plan. Upon adoption of a chemical action plan by the council,
389 all state agencies shall take any required implementing actions as set forth in the chemical action
390 plan and this chapter.

391 (e) Based on a chemical action plan as adopted by the council, the department shall,
392 promulgate regulations to restrict the use of priority toxic substances for specified uses and
393 within consumer products. Such regulations shall establish a substitution deadline, substitution
394 planning requirements for specific of each priority toxic substance use, and specify acceptable
395 alternatives.

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

397 (1) require toxics users and other persons to file with the department a certification of
398 compliance with any substitution or other requirement promulgated by the department, or

399 (2) authorize the filing with the department of an application to use an alternative
400 substance that has not been identified as an acceptable alternative, documenting with toxicity and
401 exposure data how the proposed alternative substance would ensure protection of health and the
402 environment and, in response to such request, the department shall determine whether such
403 alternative is acceptable, or

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

408 (i) identification of the specific use of the priority toxic substance for which a waiver is
409 sought;

410 (ii) identification of all alternatives considered and their cost and feasibility
411 considerations;

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

413 (iv) documentation of any efforts to be taken to minimize the use of the priority toxic
414 substance and of human and environmental exposures to such substance until safer alternatives
415 are found and implemented; and

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

417 In granting such waivers, the department shall, in consultation with the department of
418 public health and the department of economic development, consider whether: (i) there is a need
419 for the use of the substance; (ii) there is no safer alternative feasibly available, (iii) the
420 availability of ABC Fund assistance to the applicant and (iv) the impact on the economic
421 viability of Massachusetts businesses. Waivers shall not be granted for more than 3 years.

422 (d) This section shall apply to a person who manufactures, sells, offers for sale or
423 distributes products containing a priority toxic substance in the commonwealth.

424 (e) Within the time of a substitution deadline established by the department, the
425 department shall require any regulated entity to certify that substitution of the substance has been
426 completed.

427 Section 27. Certain functions provided for in this chapter may be transferred to or carried
428 out in cooperation with an interstate entity. The interstate entity may, among other functions:
429 compile and categorize chemical lists, produce alternatives assessment reports; develop model
430 chemical action plans and house product or chemical use registries. The department may
431 promulgate regulations to carry out this section.

432 Section 28. (a) Except as otherwise provided in subsection (b), violations of sections 24
433 to 26, inclusive, may be punished by a fine of not more than \$25,000 per day for each day a
434 violation exists. In addition, the department may prohibit the sale or distribution of products
435 when a distributor or manufacturer has failed to comply with this chapter.

436 (b) End users of consumer products shall not be subject to enforcement action under
437 subsection (a).

438 SECTION 15. Notwithstanding any general or special law to the contrary, an employer
439 separating one or more individuals from employment as a result of this act shall notify the
440 Department at the time of separation. The local Workforce Investment Board shall work with the
441 Rapid Response Team set aside program within the Department of Workforce Development to
442 determine a separated individuals eligibility for benefits under the set aside program. The Rapid
443 Response Team shall establish criteria to determine eligibility for benefits under the set aside
444 program. Any individual deemed eligible for benefits under this act shall be entitled to receive re
445 training, subject to the approval of the Rapid Response Team, sufficient to qualify the individual
446 to re employment at a wage not less than the wage he or she was receiving at the time of
447 separation from employment. Any individual deemed eligible for re training benefits under this
448 act shall also be eligible to receive unemployment benefits during the entire period that he or she
449 remains enrolled in and in compliance with the requirements of, any such approved retraining
450 program.

451 SECTION 16. The TURA Administrative Council shall, in consultation with the
452 Department of Environmental Protection, develop a Safer Alternatives in Products Fee, separate
453 from the Toxics Use Fee structure for large quantity toxics users. This fee shall be placed on

454 wholesale sellers or distributors of products containing priority toxic substances to entities in
455 Massachusetts, whether or not such wholesale sellers or distributors are located within the
456 Commonwealth. The fee shall initially be set at a level sufficient to raise \$2.0 million in the year
457 following enactment of this law, \$4.0 million in the second year after the enactment of this law,
458 \$6.0 million the third year and at least \$6.0 million in each subsequent year thereafter. The fee
459 shall be adjusted every three years to reflect changes in the Consumer Price Index. 75% of the
460 fee shall be collected from larger distributors and 25% from smaller distributors, based on
461 criteria the council shall establish. In addition the department shall establish a de minimis
462 threshold for products, services and toxic substances below which no fee shall be assessed.

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

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

471 SECTION 19. Nothing in this act shall require actions which are preempted by federal
472 law. Nothing in this act shall require the adoption of occupational safety and health standards or
473 the issuance of orders on an occupational safety and health matter on which the federal
474 Occupational Safety and Health Administration has established a standard. Nothing in this
475 chapter shall convey rights to discharge priority toxic substances into the environment, to cause

476 potential harm to individuals or the environment or to create a nuisance. Nothing in this chapter
477 shall limit the authority of local governments to restrict or prohibit the use or discharge of toxic
478 substances. Any product containing a priority toxic substance for which federal law governs
479 notice in a manner that affects state authority to act with respect to that product shall be exempt
480 from the requirements of this act to the extent required to satisfy the limits imposed by the
481 federal law with respect to state action regarding the product.