

**SENATE . . . . . No. 442**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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.