

SENATE No. 354

The Commonwealth of Massachusetts

PRESENTED BY:

Kenneth J. Donnelly

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to healthy families and businesses.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>
<i>Katherine M. Clark</i>	<i>Fifth Middlesex</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>Anthony W. Petrucci</i>	<i>First Suffolk and Middlesex</i>
<i>Stanley C. Rosenberg</i>	<i>Hampshire, Franklin and Worcester</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>

<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol and Plymouth</i>
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>
<i>Thomas P. Conroy</i>	<i>13th Middlesex</i>
<i>James T. Welch</i>	<i>Hampden</i>
<i>Kathleen O'Connor Ives</i>	<i>First Essex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>

SENATE No. 354

By Mr. Donnelly, a petition (accompanied by bill, Senate, No. 354) of Kenneth J. Donnelly, Katherine M. Clark, Michael Barrett, William N. Brownsberger and other members of the General Court for legislation relative to healthy families and businesses . Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Thirteen
—————

An Act relative to healthy families and businesses.

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
5 shall 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 toxic substances, the current regulatory system can be improved in
12 its efforts to protect the public health and the environment, and that the current system places
13 high burdens on government to act after the damage is done, rather than by the preferred method
14 of prevention;

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

19 That the Commonwealth is a leader in environmental health policy with regard to toxics
20 as a result of the Toxics Use Reduction Act (TURA), a successful law that provides many
21 benefits to businesses and the economy; however that such act can do more to address the
22 broader need to substantially reduce the use of harmful chemicals in consumer products used in
23 workplaces and homes;

24 That other states in the United States, the European Union, and other countries have
25 adopted restrictive policies regarding the use of toxic chemicals and adopted protective
26 requirements for products that at this time exceed our efforts here in the Commonwealth, and
27 that over 40% of Massachusetts trade is with those states and countries, and;

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

32 That investing in Massachusetts businesses to assist them in developing and instituting
33 safer alternatives will make Massachusetts a global leader in sustaining an innovative economy
34 based on research, development and production of new materials, products and processes that
35 strengthen our economy while protecting our health and environment;

36 Therefore, it is the policy of the Commonwealth to ensure the substitution of priority
37 chemical substances used in the workplace, and in consumer products sold or distributed in the
38 Commonwealth, with the safest feasible alternatives.

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

41 SECTION 1. To provide for certain unanticipated obligations of the commonwealth, to
42 provide for an alteration of purpose for current appropriations and to meet certain requirements
43 of law, the sums set forth in items 2020-0200 and 7100-0031 of section XX of chapter YY of the
44 acts of 2011 are hereby appropriated from the General Fund unless specifically designated
45 otherwise in section XX of chapter YY for the several purposes and subject to the conditions
46 specified therein and subject to the laws regulating the disbursement of public funds for the fiscal
47 year ending 2011. Such sums shall be in addition to any amounts previously appropriated and
48 made available for the purposes of the line items.

49 SECTION 2.

50 2020-0200 The secretary of energy and environmental affairs shall expend for the
51 purposes of carrying out this act, seventy percent of the funds raised through the Safer
52 Alternatives in Products Fee pursuant to section XX of chapter YY. Of these funds, thirty-seven
53 per cent of the revenue collected and allocated to the secretary of energy and environmental

54 affairs shall be allocated in consultation with the administrative council on toxics use reduction
55 for activities considered appropriate to carry out chemical action plans, grants for business
56 assistance and worker retraining; and provided further, that thirty-five per cent of such revenue
57 shall be expended by the Office of Technical Assistance for activities related to safer alternatives
58 to toxic chemicals, including business assistance and development; and provided further, that
59 twenty-eight per cent of such revenue shall be expended by the Department of Environmental
60 Protection for activities related to safer alternatives to toxic chemicals; and provided further that
61 the secretary may contract with the executive office of housing and economic development in
62 order to provide retraining benefits; and provided further that the secretary shall file a report by
63 July 1, 2011, with the house and senate committees on ways and means as well as with the joint
64 committee on environment, natural resources and agriculture detailing expenditures under this
65 item\$4,200,000.

66 7100-0301 The state treasurer shall disburse thirty per cent from funds collected through
67 the Safer Alternatives in Products Fee pursuant to, for the Safer Alternatives activities of the
68 Toxics Use Reduction Institute at the University of Massachusetts at Lowell, a portion of which
69 may be subcontracted to the University of Massachusetts at Worcester and for the University of
70 Massachusetts at Amherst for assistance with assessment reports and toxics research; provided
71 further that the institute shall file a report by July 1, 2011, detailing expenditures under this item
72 with the chairs of the house and senate committees on ways and means as well as with the joint
73 committee on environment, natural resources and
74 agriculture.....\$1,800,000

75 SECTION 3. Section 2 of chapter 21I of the Massachusetts General Laws, as appearing
76 in the 2008 Official Edition, is hereby amended, in line 2, by inserting after the word “meanings”
77 the following words:--

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

80 SECTION 4. Section 3 of chapter 21I, as so appearing, is hereby amended in paragraph
81 (F) by adding after the word “welfare” the following words:- , and to address toxic chemical
82 hazards in products

83 SECTION 5. Section 3 of chapter 21I, as so appearing, is hereby amended, in line 61, by
84 inserting after the word “reduction“ the following words:- “, substitution of safer alternatives.”

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

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

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

94 SECTION 7. Section 4 said chapter 21I, as so appearing, is hereby amended, in line 62,
95 by inserting after paragraph (G) the following paragraph:--

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

105 SECTION 8. Chapter 21I is hereby further amended by inserting after section 6 the
106 following section:- Section 6A.

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

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

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

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

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

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

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

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

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

139 (c) No later than 90 days after the passage of this Act, in consultation with the
140 Science Advisory Board, the institute shall publish a “chemicals of concern” list. This list shall
141 be published on the department’s website and available to any consumer or business. In
142 preparing this categorization, the institute shall rely on published authoritative lists of chemical
143 categorizations such as, but not limited to, the Canadian Domestic Substances List
144 Categorization, the European Commission’s list of substances of very high concern, Washington
145 State’s list of Chemicals of Concern, the California Safer Consumer Products list of Chemicals
146 of Concern, the State of Maine’s List of Chemicals of High Concern, and the International
147 Agency for Research on Cancer’s list of carcinogens. Criteria for listing such chemicals of
148 concern shall include chemicals recognized as carcinogens, mutagens and reproductive toxins;
149 chemicals recognized as persistent, bioaccumulative and toxic chemicals; chemicals recognized
150 as very persistent and very bioaccumulative chemicals; chemicals recognized as endocrine
151 disruptors; and other chemicals of equivalent concern as determined by the institute in
152 consultation with the Science Advisory Board. The institute may create subcategories within the
153 Chemicals of Concern list to take account of current chemical lists and additional information,
154 including information on emerging materials. At least every 4 years, the institute, in consultation
155 with the board, shall refine the list to incorporate new scientific information and data, and
156 publish a revised version of the list, as needed. Failure to refine the list shall not invalidate the
157 list.

158 SECTION 9. Section 7 of said chapter 21I, as appearing in the 2008 Official
159 Edition, is hereby amended by inserting at the end thereof the following 2 paragraphs:-

160 (K). The office shall oversee an “Assist Business to Compete Fund” (the ABC Fund)
161 facilitating transitions to safer alternatives to the use of alternatives assessment substances in

162 Massachusetts workplaces and in consumer products. In developing the program, the office shall
163 determine where business assistance and financial investment can be most effectively used to
164 protect public health and strengthen the Commonwealth's economy by focusing on the
165 development, application and promotion of safer alternatives.

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

- 168 (1) direct grants and loans to businesses for costs required to implement safer
169 alternatives;
- 170 (2) technical support focused on individual companies or user sectors;
- 171 (3) technical assistance in assessing safer alternatives and assistance with forming
172 consortiums to assess and develop safer alternatives;
- 173 (4) market development programs, to create demand for safer alternatives;
- 174 (5) seminars and workshops to assist businesses in adopting safer substitutes; and
- 175 (6) publications focused on particular user sectors.

176 The ABC Fund shall be developed with assistance from and collaboration with the
177 department of labor and industries, the department of economic development, the office, the
178 department of labor and workforce development, and the institute.

179 (L) The office shall consult with the institute, and other agencies to establish an
180 innovative business leaders program to encourage early substitution of alternatives assessment
181 substances. The program shall assist users of alternatives assessment substances to complete
182 substitution plans. The program may include priority targeted financial and technical assistance
183 and support for research, information gathering and implementation.

184 SECTION 10. Chapter 21I is hereby amended by inserting after section 23 the following
185 5 sections:

186 Section 24. Safer Alternatives Definitions

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

189 "Alternative", a chemical substance, material, product, process, function, system, or other
190 action of equivalent function which can be substituted for the use of a particular chemical
191 substance.

192 "Article" means a manufactured item, other than an item which is manufactured at the
193 facility, and which:

- 194 (a) is formed to a specific shape or design during manufacture;
- 195 (b) has end use functions dependent in whole or in part upon its shape or design
196 during end use; and
- 197 (c) does not release a chemical substance under normal conditions of processing or
198 use of that item at the facility or establishments.

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

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

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

214 “GreenScreen for Safer Chemicals”, means the chemical screening method called
215 GreenScreen™ for Safer Chemicals, published online by Clean Production Action.

216 “Manufacturer”, any person, firm, association, partnership, corporation, governmental
217 entity, organization, combination or joint venture which produces a consumer product containing
218 a priority chemical substance or alternatives assessment substance or an importer or domestic
219 distributor of a consumer product containing a priority chemical substance or alternatives
220 assessment substance and that is produced in a foreign country. In the case of a consumer
221 product made with components made by different manufacturers, the manufacturer is the
222 manufacturer who produced the component containing the priority chemical substance or
223 alternatives assessment substance. If the consumer product or component is produced in a
224 foreign country, the manufacturer is the importer or domestic distributor; provided, however, that
225 if a company from whom an importer purchases the consumer product or component has a
226 United States presence or assets, that company shall be considered to be the manufacturer.

227 “Safer Alternative”, an alternative, including a change in chemical substance, material,
228 product, process, function, system or other action, that replaces a chemical substance currently in

229 use and that would be effective in reducing the chemical substance’s harm to human health or the
230 environment without causing equivalent or greater harm to workers, consumers or the
231 environment.

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

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

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

239 Section 25. Designation and Assessment of Priority Chemical Substances

240 (a) No later than 180 days following the passage of this Act, the department shall
241 promulgate regulations that (i) designate priority chemical substances in accordance with
242 subsection (b); and (ii) require notification by businesses to the institute and the department in
243 accordance with subsection (d).

244 (b) The council shall designate by regulation at least 50 but no more than 70 chemical
245 substances from the list of chemicals of concern, established pursuant to section 7(c), as priority
246 chemical substances, except that on the effective date of this subparagraph, those substances
247 identified as higher hazard substances under Chapter 21I Section 9 shall be designated as priority
248 chemical substances. This designation shall not otherwise diminish the authority of the council or
249 the department. The list of priority chemical substances shall be reviewed by the council at least
250 every four years. In the first four year period, the list shall include only chemicals intentionally
251 added in products or components of products and exclude contaminants and byproducts.

252 (i). In designating priority chemical substances, the council shall prioritize substances
253 that adversely impact human health and/or the environment with highest priority given to
254 preventing adverse impacts on children, infants, developing fetuses, and workers, and other
255 vulnerable populations and chemicals showing up in the body burden of humans or in waterways
256 or household air or dust. In designating priority chemical substances the council may consider
257 opportunities that strengthen the Commonwealth’s economy.

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

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

264 priority chemical substance shall be used within the Commonwealth unless the user of a priority
265 chemical substance has submitted notification to the institute and the department in accordance
266 with section 25(d).

267 (d) Manufacturers and users of a priority chemical substance shall notify the institute
268 and the department within 120 days of the designation of that substance in accordance with the
269 following:

270 (i) Manufacturers shall file a notice with the institute and the department identifying the
271 consumer product, the approximate number of units distributed in the Commonwealth, an
272 estimate of the amount or concentration of the priority chemical substance contained in each
273 unit, the purpose for including the priority chemical substance, and the name, address, and phone
274 number of a contact person, and other relevant information the department may require. The
275 department may allow a manufacturer, distributor or trade group to supply the information
276 required above for a consumer product category rather than an individual consumer product.
277 The manufacturer shall update and revise the notification whenever there is a significant change
278 in the information or when requested by the department.

279 (ii) Users of a priority chemical substance shall file notice with the institute and the
280 department identifying the name and address of each facility where the priority chemical
281 substance is manufactured, processed, or otherwise used, the mass of each priority chemical
282 substance manufactured, processed, or otherwise used, the purpose or function of the priority
283 chemical substance, the product type and manufacturing process type in which it is used and the
284 name, address, and phone number of a contact person, and other relevant information the
285 department may require. The user of a priority chemical substance shall update and revise the
286 notification whenever there is a significant change in the information or when requested by the
287 department. Large quantity toxics users and other toxics users within a designated priority user
288 segments already subject to reporting on a priority chemical substance under section 10 shall be
289 exempt from the requirements of this section for that priority chemical substance.

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

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

294 (v) Distribution of information:

295 i. Public disclosure of confidential business information submitted to the institute
296 and the department pursuant to subsection (d) shall be governed by the requirements of section
297 10 of chapter 66.

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

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

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

311 (e) The institute, with input from the council, shall identify a list of at least 5 priority
312 chemical substances per year to be designated as “alternatives assessment substances.” For each
313 of these substances the institute shall, within 180 days, prepare a Preliminary Safer Alternatives
314 Assessment. The goal of the Preliminary Safer Alternative Assessment is to identify possible
315 safer alternatives as well as potentially inferior alternatives and provide guidance to responsible
316 entities conducting alternatives assessments.

317 The council shall establish a schedule for the development of each Preliminary Safer
318 Alternatives Assessment, in consultation with the institute. For each Preliminary Safer
319 Alternatives Assessment, the institute shall:

320 (i). identify the uses and functions of the alternatives assessment substance (including
321 its incorporation into consumer products), focusing on uses and functions in products used and
322 manufactured in the Commonwealth. Uses and functions shall be identified and selected for
323 further study and alternatives assessment, with highest priority given to uses that may adversely
324 impact children, infants, developing fetuses, and workers, and other vulnerable populations,
325 consistent with the criteria set forth in section 25(b)(ii), as well as uses that could lead to the
326 highest potential exposure and are substitutable..

327 (ii). identify whether any of the selected uses of the alternatives assessment substance
328 are clearly unnecessary;

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

330 (iv). use the chemicals categorization list developed by the institute and other
331 published chemical lists, including government lists of substances used in industry or in

332 consumer products to assist in identifying potential safer alternatives, and may use chemical
333 hazard assessment tools, such as the GreenScreen for Safer Chemicals, in this process;

334 (v). identify whether safer alternatives are available for those selected uses and
335 functions of the alternatives assessment substance;

336 (vi). Provide a qualitative discussion of the economic and technical viability,
337 opportunities and costs associated with adopting and implementing any safer alternatives.

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

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

345 (ix). publish the results of the Preliminary Safer Alternatives Assessment; and

346 (x). periodically review the Preliminary Safer Alternatives Assessment and its
347 findings with the advisory committee and the council and revise such assessment as necessary to
348 update it and to address new recommendations. Revised assessments shall be made available to
349 the public for comment, and final revised assessments shall be published. Such periodic reviews
350 shall be conducted no less frequently than once every five years.

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

355 (g) In the event that an alternatives assessment substance to be assessed is used for
356 medical purposes, the institute shall contract with resources at the University of Massachusetts at
357 Worcester for assistance and guidance in assessing medical uses of such substance.

358 Section 26. Responsible Entity Alternatives Assessment Report

359 (a) The institute shall present each completed Preliminary Safer Alternatives
360 Assessment to the council. The council shall use the completed report to identify priority uses of
361 the alternatives assessment substance that pose a significant hazard to human health or the
362 environment, with highest priority given to uses that adversely impact children, infants,
363 developing fetuses, and workers, and other vulnerable populations.

364 (c) Based on the council designation, any manufacturer that sells or distributes the
365 alternatives assessment substance in a product or component of a product sold in the

366 Commonwealth must complete a Responsible Entity Alternatives Assessment Report within 180
367 days of that priority use being designated. Products or product components for which such
368 reports have not been received will be prohibited from sale in the Commonwealth until such
369 report has been completed. The institute shall develop guidance for the Responsible Entity
370 Alternatives Assessment Report that outlines the minimum criteria and process for completing
371 such a report. At a minimum the report shall include:

372 a. An evaluation of toxicity of alternatives, considering potential environmental,
373 consumer, or health and safety trade-offs. Such evaluation may include trade-offs in the
374 chemical lifecycle, including upstream manufacture and end of life. Such evaluation may include
375 a GreenScreen for Safer Chemicals comparative hazard assessment evaluation, or equivalent
376 chemical screening system, for each alternative.

377 b. An evaluation of the technical and economic feasibility of identified alternatives.

378 c. An explanation of why particular alternatives were rejected or accepted.

379 (d) Alternatives assessment reports may be completed by manufacturers individually
380 or in a consortia representing numerous manufacturers.

381 (e) The alternatives assessment report shall be certified by a Toxics Use Reduction
382 planner, who has received additional training required by the institute and the council to certify
383 alternatives assessment reports.

384 (f) Alternatives for which GreenScreen for Safer Chemicals, or an equivalent
385 chemical screening system, has been completed and received Benchmark 1 scores shall be listed
386 in the Massachusetts Safer Alternatives Inventory, identified for particular functional uses and
387 product or component types.

388 (g) A manufacturer may be exempt from these requirements by demonstrating
389 removal of the alternatives assessment substance for the priority use in products sold or
390 distributed in the Commonwealth. In such cases, the manufacturer shall demonstrate through, at
391 a minimum, a GreenScreen for Safer Chemicals hazard assessment or equivalent chemical
392 screening system, that the alternative does not present greater hazard to health and environment.

393 Section 27. Regulatory Response

394 (a) Not later than 1 year after completion of the Preliminary Safer Alternatives
395 Assessment, the department, in consultation with the institute, the office, the advisory
396 committee, and other agencies as appropriate, shall prepare a regulatory response, which
397 addresses the priority chemical substance use(s) designated by the council. The regulatory
398 response shall include draft regulations, for review by the council and members of the public.

399 (b) The goal of the regulatory response addressing an alternatives assessment
400 substance is to accomplish the substitution of safer alternative(s) for the alternatives assessment
401 substance in those designated priority chemical substance uses as expeditiously as possible. The
402 regulatory response shall include labeling requirements unless the department specifies that this
403 is unnecessary. It shall also include control measures where safer alternatives are not available
404 and research and development. The regulatory response shall establish requirements through
405 which manufacturers of such alternatives assessment substance shall accomplish this goal, and
406 shall also describe actions to be undertaken by appropriate state agencies to ensure the goal of
407 the plan is met.

408 (i) Where possible, the regulatory response shall seek to strengthen Massachusetts
409 business and develop job opportunities, and to coordinate state activities to accomplish this goal.
410 In preparing the regulatory response, the department shall consult with the institute, the office,
411 and other relevant state agencies and authorities to identify and plan for coordinated actions of
412 these agencies and authorities to achieve the plan's goal.

413 (ii) To accomplish the goals established in section 27(b) and section 27(b)(i), a
414 regulatory response for an alternatives assessment substance use with feasible alternatives shall:

415 (a) identify specific actions that manufacturers of alternatives assessment substances
416 shall be required to implement;

417 (b) require substitution of a safer alternative;

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

420 (d) where appropriate, require manufacturers of alternatives assessment substances to
421 prepare and submit to the department plans to effect the substitution(s); and

422 (e) provide for technical assistance to manufacturers of alternatives assessment
423 substances.

424 (iii) In establishing deadlines and schedules for substituting safer alternatives for
425 alternatives assessment substances, the department shall consider the potential impacts to human
426 health and the environment of the continued use of the alternatives assessment substance. If
427 children or workers will continue to be exposed to one or more alternatives assessment
428 substances during the period in which substitution is being implemented, then the regulatory
429 response shall include measures a manufacturer of an alternatives assessment substance, as
430 appropriate, shall take to eliminate or reduce exposure of a alternatives assessment substance to
431 those populations.

432 (c) For uses where safer alternatives are feasible, but where substitution will require
433 manufacturers or users of alternatives assessment substances to make significant expenditures,

434 such as for consumer product reformulation, new equipment or training, the regulatory response
435 shall include a targeted ABC Fund program. The timetable for completing substitutions
436 established in a regulatory response shall take into consideration the financial needs of the
437 manufacturers and users of the alternatives assessment substance.

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

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

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

459 (iii). requirements for consumer product labeling and other notification to users that a
460 consumer product contains an alternatives assessment substance and advice on the proper
461 handling and disposal to minimize human exposure to the alternatives assessment substance; and

462 (iv). limitations on certain continued uses of the alternatives assessment substance in
463 specific applications, as appropriate.

464 (e) Each regulatory response shall include draft regulations required for
465 implementation. Such regulations shall include appropriate requirements for manufacturers of
466 products containing alternatives assessment substances to file with the department plans to
467 achieve compliance, periodic reports about progress toward implementation or about continued
468 use of the alternatives assessment substance, and periodic certifications of compliance with any
469 substitution or risk reduction requirements, or alternatively:

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

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

479 (a) identification of the specific use of the alternatives assessment substance for
480 which a waiver is sought;

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

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

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

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

489 (f) In deciding whether to grant a waiver, the department shall consider: (i) whether
490 there is a need for the use of the substance; (ii) whether no safer alternative is feasibly available,
491 (iii) whether ABC Fund assistance is available to the applicant and (iv) the impact on the
492 economic viability of Massachusetts businesses. Waivers shall not be granted for more than
493 three years, but may be renewed by the department. In deciding whether to grant a waiver
494 application, the department may consult with the institute, the office, and the department of
495 economic development.

496 (g) After the department has prepared a draft regulatory response, including draft
497 regulations, the draft regulatory response shall be submitted to the council, and to the public for
498 comment pursuant to chapter 30A. The final regulatory response (which shall contain the
499 department's final regulations) shall be approved by the council prior to promulgation of the
500 regulations by the department.

501 (h) A regulatory response may be updated and amended from time to time by the
502 department to reflect new scientific and/or technical information about the hazards posed by a
503 alternatives assessment substance, the availability a safer alternatives for a alternatives
504 assessment substance in a particular priority use, the feasibility of substituting a safer alternative

505 for a alternatives assessment substance, new priority uses of a alternatives assessment substance,
506 and other information without limitation. Any such revised regulatory response shall contain
507 draft implementing regulations prepared by the department. Once a final revised regulatory
508 response is approved by the council, the department shall promulgate final implementing
509 regulations.

510 Section 28. Interstate Cooperation in Chemical Substance Regulation

511 The executive office of energy and environmental affairs may cooperate with other states
512 in an interstate chemicals clearinghouse regarding chemicals in consumer products, including the
513 classification of priority chemicals in commerce; organizing and managing available data on
514 chemicals, including information on uses, hazards, risks, and environmental and health concerns;
515 and producing and evaluating information on safer alternatives to specific uses of priority
516 chemicals. The department may promulgate regulations to carry out this section.

517 SECTION 11. Violations of the Safer Alternatives Act

518 (a) Section 21 of chapter 21I of the General Laws as so appearing in the 2008 Official
519 Edition is hereby amended by inserting in paragraph (B), after the word “twenty,” the following
520 words:-

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

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

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

526 SECTION 12. Notwithstanding any general or special law to the contrary, the
527 Department of Workforce Development, in coordination with local Workforce Investment
528 Boards, shall make the Rapid Response Team set aside program readily available to any
529 employer subject to this Act for the purposes of benefit eligibility determination and other
530 programs or services.

531 SECTION 13. Safer Alternatives in Products Fee

532 (a)The Administrative Council on Toxics Use Reduction shall develop an annual Safer
533 Alternatives in Products Fee pursuant to section 2 of this Act, separate from the Toxics Use Fee
534 structure for large quantity toxics users. This fee shall be placed on manufacturers of consumer
535 products containing priority chemical substances and on wholesale sellers or distributors of such
536 products to entities in Massachusetts, whether or not such manufacturers, wholesale sellers and
537 distributors are located within the Commonwealth. Large quantity toxics users and other toxics
538 users within a priority user segment that are already paying a Toxics Use Fee for the use of a

539 priority chemical substance are exempt from the Safer Alternatives in Products Fee for that
540 priority chemical substance.

541 (b)The fee shall initially be set at a level sufficient to raise \$2.0 million in the fiscal year
542 following enactment of this law, \$4.0 million in the second year after the enactment of this law,
543 \$6.0 million the third year and at least \$6.0 million in each subsequent year thereafter. The fee
544 shall be adjusted every three years to reflect changes in the Consumer Price Index, and other
545 factors identified by the council that may help to accomplish the goals of this Act.

546 (c)Seventy-five percent of the revenue generated by the fee shall be collected from larger
547 manufacturers and users of priority chemical substances and larger wholesale sellers and
548 distributors of such substances, and twenty-five percent of the revenue generated by the fee shall
549 be collected from smaller manufacturers and users of priority chemical substances and smaller
550 wholesale sellers and distributors of such substances, based on criteria the council shall establish.
551 In addition the council shall establish a de minimis threshold for priority chemical substances in
552 consumer products and uses below which no fee shall be assessed.

553 (d)Annually, the state treasurer shall disburse funds raised through the Safer Alternatives
554 in Products Fee in the following fashion: thirty per cent of revenues collected for Safer
555 Alternatives activities of the Toxics Use Reduction Institute at the University of Massachusetts at
556 Lowell, a portion of which may be subcontracted to the University of Massachusetts at
557 Worcester or to the University of Massachusetts at Amherst for assistance with assessment
558 reports and toxics research; and seventy per cent of revenues collected to the secretary of energy
559 and environmental affairs. The secretary of environmental affairs shall allocate funds received
560 annually from such revenue in the following manner: thirty-seven percent year shall be
561 allocated, in consultation with the council, for activities considered appropriate to carry out
562 chemical action plans, grants for business assistance, and worker retraining; thirty-five percent
563 shall be allocated to the office of technical assistance for activities related to safer alternatives to
564 priority chemical substances; and twenty-eight percent shall be allocated to the Department of
565 Environmental Protection for activities related to chemical action plans and other duties
566 established by this Act.

567 (e)Any manufacturer or user of a priority chemical substance who employs the equivalent
568 of fewer than 100 full-time individuals may, in instances of severe financial hardship, apply on
569 or before July 1 of any year for a waiver of the fee to the commissioner of the department. The
570 commissioner may, for good cause shown, waive the fee for that year in whole or in part, or
571 extend the time for paying any part of the fee. The commissioner shall annually report to the
572 council the waivers granted.

573 SECTION 14. The council and the institute, in consultation with the department
574 and the office of technical assistance and technology, shall establish a “Massachusetts Safer
575 Alternatives Inventory” that will include substances from the “chemicals of concern” list as well

576 as information on possible safer alternatives to those substances and functional uses. The
577 inventory will be available on a public website and provide an informational resource for
578 individuals and businesses in the Commonwealth. In establishing the safer alternatives inventory,
579 the council and the institute may use as an example the U.S. Environmental Protection Agency's
580 Safer Chemicals Ingredients List and Design for the Environment Safer Product Labeling
581 Program.

582 SECTION 15. Nothing in this act shall require actions preempted by federal law.