

SENATE No. 397**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>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>

Kay Khan

11th Middlesex

SENATE No. 397

By Mr. Donnelly, a petition (accompanied by bill, Senate, No. 397) of Kenneth J. Donnelly, Jay R. Kaufman, Timothy R. Madden, Denise Provost and other members of the General Court for legislation relative to healthy families and businesses. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 354 OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

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 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

Whereas the General Court finds that:

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

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

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

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

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

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

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

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

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

SECTION 2.

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

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

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

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

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

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

(J) The institute shall establish a technical assistance grant program to assist organizations of consumers or workers focused on the impact of substitutions of safer alternatives in specific products, sectors, or uses. The grants may provide assistance for activities that may include but are not limited to securing information on chemical substances and their impact on workers, consumers and the environment; hiring independent technical support regarding chemical substances, production processes and work organization; and paying for training programs to assist affected groups in analyzing the changes.

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

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

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

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

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

(1) provide general information about chemical substances and actively publicize the 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.

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

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

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

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

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

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

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

(L) The office shall consult with the institute, and other agencies to establish an innovative business leaders program to encourage early substitution of alternatives assessment substances. The program shall assist users of alternatives assessment substances to complete

substitution plans. The program may include priority targeted financial and technical assistance and support for research, information gathering and implementation.

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

Section 24. Safer Alternatives Definitions

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

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

“Article” means a manufactured item, other than an item which is manufactured at the facility, and which:

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

“Chemical substance”, any element, chemical, compound, mixture of elements and/or compounds, or class of compounds, provided that a chemical substance shall not be subject to the provisions of sections 24 through 28, inclusive, when it is: (1) present in crude, lubricating,

or fuel oils or petroleum materials being held for direct wholesale or retail sale; (2) present in fuels used in combustion to produce electricity, steam, or heat; (3) present as a naturally-occurring substance in fuels and in emissions or byproducts as a result of the combustion of fuels; or (4) required to be present or used in the manufacturing of a product manufactured in Massachusetts by a contractor or subcontractor pursuant to a contract with the Department of Defense or the Department of Homeland Security.

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

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

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

“Manufacturer”, any person, firm, association, partnership, corporation, governmental entity, organization, combination or joint venture which produces a consumer product containing a priority chemical substance or alternatives assessment substance or an importer or domestic distributor of a consumer product containing a priority chemical substance or alternatives assessment substance and that is produced in a foreign country. In the case of a consumer product made with components made by different manufacturers, the manufacturer is the manufacturer who produced the component containing the priority chemical substance or alternatives assessment substance. If the consumer product or component is produced in a

foreign country, the manufacturer is the importer or domestic distributor; provided, however, that if a company from whom an importer purchases the consumer product or component has a United States presence or assets, that company shall be considered to be the manufacturer.

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

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

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

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

Section 25. Designation and Assessment of Priority Chemical Substances

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

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

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

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

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

chemical substance has submitted notification to the institute and the department in accordance with section 25(d).

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

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

(ii) Users of a priority chemical substance shall file notice with the institute and the department identifying the name and address of each facility where the priority chemical substance is manufactured, processed, or otherwise used, the mass of each priority chemical substance manufactured, processed, or otherwise used, the purpose or function of the priority chemical substance, the product type and manufacturing process type in which it is used and the name, address, and phone number of a contact person, and other relevant information the department may require. The user of a priority chemical substance shall update and revise the notification whenever there is a significant change in the information or when requested by the

department. Large quantity toxics users and other toxics users within a designated priority user segments already subject to reporting on a priority chemical substance under section 10 shall be exempt from the requirements of this section for that priority chemical substance.

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

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

(v) Distribution of information:

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

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

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

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

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

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

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

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

(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.

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

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

Section 26. Responsible Entity Alternatives Assessment Report

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

(c) Based on the council designation, any manufacturer that sells or distributes the alternatives assessment substance in a product or component of a product sold in the Commonwealth must complete a Responsible Entity Alternatives Assessment Report within 180 days of that priority use being designated. Products or product components for which such reports have not been received will be prohibited from sale in the Commonwealth until such report has been completed. The institute shall develop guidance for the Responsible Entity Alternatives Assessment Report that outlines the minimum criteria and process for completing such a report. At a minimum the report shall include:

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

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

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

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

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

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

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

Section 27. Regulatory Response

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

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

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

(ii) To accomplish the goals established in section 27(b) and section 27(b)(i), a 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

established in a regulatory response shall take into consideration the financial needs of the manufacturers and users of the alternatives assessment substance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) After the department has prepared a draft regulatory response, including draft regulations, the draft regulatory response shall be submitted to the council, and to the public for

comment pursuant to chapter 30A. The final regulatory response (which shall contain the department's final regulations) shall be approved by the council prior to promulgation of the regulations by the department.

(h) A regulatory response may be updated and amended from time to time by the department to reflect new scientific and/or technical information about the hazards posed by a alternatives assessment substance, the availability a safer alternatives for a alternatives assessment substance in a particular priority use, the feasibility of substituting a safer alternative for a alternatives assessment substance, new priority uses of a alternatives assessment substance, and other information without limitation. Any such revised regulatory response shall contain draft implementing regulations prepared by the department. Once a final revised regulatory response is approved by the council, the department shall promulgate final implementing regulations.

Section 28. Interstate Cooperation in Chemical Substance Regulation

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

SECTION 11. Violations of the Safer Alternatives Act

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

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

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

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

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

SECTION 13. Safer Alternatives in Products Fee

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

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

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

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

(d)Annually, the state treasurer shall disburse funds raised through the Safer Alternatives in Products Fee in the following fashion: thirty per cent of revenues collected for Safer Alternatives activities of the Toxics Use Reduction Institute at the University of Massachusetts at Lowell, a portion of which may be subcontracted to the University of Massachusetts at Worcester or to the University of Massachusetts at Amherst for assistance with assessment reports and toxics research; and seventy per cent of revenues collected to the secretary of energy and environmental affairs. The secretary of environmental affairs shall allocate funds received 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 and the
574 office of technical assistance and technology, shall establish a “Massachusetts Safer Alternatives
575 Inventory” that will include substances from the “chemicals of concern” list as well as
576 information on possible safer alternatives to those substances and functional uses. The inventory
577 will be available on a public website and provide an informational resource for individuals and
578 businesses in the Commonwealth. In establishing the safer alternatives inventory, the council and
579 the institute may use as an example the U.S. Environmental Protection Agency’s Safer
580 Chemicals Ingredients List and Design for the Environment Safer Product Labeling Program.

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