

SENATE No. 453

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

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 for a competitive economy through safer alternatives to toxic chemicals.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Theodore C. Speliotis</i>	<i>13th Essex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>

SENATE No. 453

By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 453) of Marc R. Pacheco, Timothy J. Toomey, Jr., Jason M. Lewis and Barbara L'Italien for legislation relative to safer alternatives to toxic chemicals. Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 387 OF 2013-2014.]

The Commonwealth of Massachusetts

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

An Act for a competitive economy through safer alternatives to toxic chemicals.

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

1 SECTION 1. Section 2 of chapter 21I of the Massachusetts General Laws, as appearing
2 in the 2014 Official Edition, is hereby amended, in line 2, by inserting after the word “meanings”
3 the following words: “unless defined otherwise in section 24 for the purposes of sections 24
4 through 28, inclusive”.

5 SECTION 2. Section 3 of said chapter 21I, as so appearing, is hereby amended, in line
6 61, by inserting after the word “reduction” the following words: “ substitution of safer
7 alternatives.”

8 SECTION 3. Section 4 of said chapter 21I, as so appearing, is hereby amended, in line
9 57, by inserting at the end of subsection (F) the following paragraphs:

10 The advisory committee shall conduct a study and approve recommendations on funding
11 mechanisms for the safer alternatives in products program established under this chapter. The
12 committee shall draft and, with an affirmative vote of two thirds (2/3) of the committee
13 members, approve recommendations for a funding mechanism for the safer alternatives in
14 products program. The committee shall submit the approved recommendations to the clerks of
15 the House of Representatives and Senate and the joint committee on environment, natural
16 resources and agriculture no later than eighteen (18) months after the effective date of this
17 section.

18 Not later than twenty-four (24) months after the effective date of this act shall the
19 legislature take action upon the recommendations set forth in the above subparagraph (a).

20 SECTION 4. Said section 4 of said chapter 21I, as so appearing, is hereby amended, in
21 line 62, by inserting after subsection (G) the following subsection:

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

31 SECTION 5. Section 6 of said chapter 21I, as so appearing, is hereby further amended, in
32 line 77, by inserting after subsection (J) the following subsection:

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

40 SECTION 6. Chapter 21I is hereby further amended by inserting after section 6 the
41 following section:

42 Section 6A.

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

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

51 i. provide general information about chemical substances and actively publicize the
52 advantages of and developments in safer alternatives and the requirements of this chapter, which
53 shall include, but not be limited to, providing information about public health, environmental and
54 economic issues associated with toxics use and toxics use reduction;

55 ii. establish courses, seminars, conferences and other events and provide reports, updates,
56 guides and other publications and other means of providing technical information for consumers
57 and, as appropriate, work in coordination with the office;

58 iii. develop and provide curriculum and training for higher education students and faculty
59 on priority chemical substances and potential safer alternatives;

60 iv. sponsor or engage in research to identify potential priority chemical substances and
61 potential safer alternatives to such substances;

62 v. sponsor research or pilot projects to develop and demonstrate innovative technologies
63 for implementing safer alternatives to priority chemical substances;

64 vi. develop in consultation with the department and office, a safer alternatives curriculum
65 and training program to supplement the toxics use reduction planner training program; and

66 vii. provide safer alternatives implementation training and assistance to citizens,
67 community groups, nonprofit organizations and institutions, workers, labor representatives,
68 businesses, consumer product supply chains and state and local government boards and officials;
69 provided, however, that such training and assistance shall provide such individuals and groups
70 with an understanding of the public health and environmental impacts of the presence of

71 chemical substances, the methods and strategies for substituting safer alternatives for priority
72 chemical substances and the requirements of this chapter.

73 (c) No later than eighteen (18) months after effective date of this section, the institute
74 shall publish a list of chemical substances commonly used in Massachusetts industry or in
75 consumer products sold in Massachusetts. In consultation with the science advisory board, the
76 institute shall categorize chemicals on said list into one of four categories: chemicals of high
77 concern, chemicals of concern, chemicals of unknown concern, and chemicals of low concern.
78 The chemicals of high concern category shall include chemicals recognized as carcinogens,
79 mutagens and reproductive toxins; chemicals recognized as persistent, bioaccumulative and toxic
80 chemicals; chemicals recognized as very persistent and very bioaccumulative chemicals;
81 chemicals recognized as endocrine disruptors; and other chemicals of equivalent concern. The
82 institute may create subcategories within these four categories. These categories may be
83 adjusted to take account of current chemical lists and additional information, including
84 information on emerging materials. From time to time, but at least every four (4) years, the
85 institute, in consultation with the board, shall refine the list to incorporate new scientific
86 information and data, and publish a revised version of the list, as needed. Failure to refine the
87 list shall not invalidate the list.

88 SECTION 7. Chapter 21I is hereby amended by inserting after section 23 the following
89 5 sections:

90 Section 24. Safer Alternatives Definitions

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

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

96 “Article” means a manufactured item, other than an item which is manufactured at the
97 facility, and which is formed to a specific shape or design during manufacture, has end use
98 functions dependent in whole or in part upon its shape or design during end use, and does not
99 release a chemical substance under normal conditions of processing or use of that item at the
100 facility or establishments.

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

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

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

116 “Manufacturer”, any person, firm, association, partnership, corporation, governmental
117 entity, organization, combination or joint venture which produces a consumer product containing
118 a priority chemical substance or an importer or domestic distributor of a consumer product
119 containing a priority chemical substance and that is produced in a foreign country. In the case
120 of a consumer product made with components made by different manufacturers, the
121 manufacturer is the manufacturer who produced the component containing the priority chemical
122 substance. If the consumer product or component is produced in a foreign country, the
123 manufacturer is the importer or domestic distributor; provided, however, that if a company from
124 whom an importer purchases the consumer product or component has a United States presence
125 or assets, that company shall be considered to be the manufacturer.

126 “Medical Device”, an instrument, apparatus, implement, machine, contrivance, implant,
127 in vitro reagent, or other similar or related article, including a component part, or accessory
128 which is recognized in the official National Formulary, or the United States Pharmacopoeia, or
129 any supplement to them, intended for use in the diagnosis of disease or other conditions, or in
130 the cure, mitigation, treatment, or prevention of disease, in man or other animals, or intended to
131 affect the structure or any function of the body of man or other animals, and which does not
132 achieve any of its primary intended purposes through chemical action within or on the body of
133 man or other animals and which is not dependent upon being metabolized for the achievement of
134 any of its primary intended purposes.

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

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

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

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

147 Section 25.

148 (a)No later than twelve (12) months after enactment of this section, the council shall
149 promulgate regulations that establish processes and procedures for designating priority chemical
150 substances in accordance with chapter; and require notification by businesses to the department
151 in accordance with this chapter.

152 (b)Upon the appropriation of sufficient resources, the council by regulation shall
153 designate 2 to 4 chemical substances annually from the list of chemicals of high concern,
154 established pursuant to section 6A, as priority chemical substances.

155 (c) In designating the number of priority chemical substances, the council shall consider
156 institute resources for performing safer alternatives assessment reports.

157 i. In designating priority chemical substances, the council shall prioritize substances that
158 adversely impact human health and/or the environment with highest priority given to preventing
159 adverse impacts on children, infants, developing fetuses, and workers, and other vulnerable
160 populations. In designating priority chemical substances the council may consider opportunities
161 that strengthen the Commonwealth's economy.

162 ii. Each designation of a priority chemical substance shall include appropriate de
163 minimus thresholds below which the requirements of section 25(e)(i.) and section 25(e)(ii.) shall
164 not apply.

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

170 (e) Manufacturers and users of a priority chemical substance shall notify the institute and
171 the department within six (6) months of the designation of that substance in accordance with the
172 following:

173 i. Manufacturers shall file a notice with the institute and the department identifying the
174 consumer product, the approximate number of units distributed in the Commonwealth, an
175 estimate of the amount or concentration of the priority chemical substance contained in each
176 unit, the purpose for including the priority chemical substance, and the name, address, and phone

177 number of a contact person, and other relevant information the department may require. The
178 department may allow a manufacturer, distributor or trade group to supply the information
179 required above for a consumer product category rather than an individual consumer product.
180 The manufacturer shall update and revise the notification whenever there is a significant change
181 in the information or when requested by the department.

182 ii. Users of a priority chemical substance shall file notice with the institute and the
183 department identifying the name and address of each facility where the priority chemical
184 substance is manufactured, processed, or otherwise used, the mass of each priority chemical
185 substance manufactured, processed, or otherwise used, the purpose for using the priority
186 chemical substance, and the name, address, and phone number of a contact person, and other
187 relevant information the department may require. The user of a priority chemical substance shall
188 update and revise the notification whenever there is a significant change in the information or
189 when requested by the department. Large quantity toxics users and other toxics users within a
190 designated priority user segments already subject to reporting on a priority chemical substance
191 under section 10 shall be exempt from the requirements of this section for that priority chemical
192 substance.

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

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

197 v. Distribution of information:

198 1. Public disclosure of confidential business information submitted to the institute and the
199 department pursuant to this section shall be governed by the requirements of section 10 of
200 chapter 66.

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

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

210 (f) Any consumer product containing a priority chemical substance for which federal law
211 governs notice in a manner that preempts state authority shall be exempt from the requirements
212 of this section.

213 (g) The institute shall prepare a Safer Alternatives Assessment Report for each substance
214 designated by the council as a priority chemical substance. The council shall establish a
215 schedule for the development of each safer alternatives assessment report, in consultation with
216 the institute. For each safer alternatives assessment report, the institute shall:

217 i. identify the uses and functions of the priority chemical substance (including its
218 incorporation into consumer products), focusing on uses and functions in the Commonwealth.
219 Uses and functions shall be identified and selected for further study and action, with highest

220 priority given to uses that adversely impact children, infants, developing fetuses, and workers,
221 and other vulnerable populations;

222 ii. identify whether alternatives are available for those selected uses and functions of the
223 priority chemical substance;

224 iii. identify whether any of the selected uses of the priority chemical substance are of a
225 clearly unnecessary nature;

226 iv. research and study relevant factors to characterize feasible alternatives;

227 v. provide a qualitative discussion of the economic viability, opportunities and costs
228 associated with adopting and implementing any safer alternatives. Such discussion may include
229 a qualitative characterization of the economic impacts and benefits of substitution, the extent of
230 human exposure to the priority chemical substance that could be eliminated through substitution
231 or other actions and potential public health benefits or reductions in health care costs;

232 vi. identify selected uses of the priority chemical substance that do not currently have a
233 feasible safer alternative available and make recommendations for promoting research and
234 development of such alternatives; and any interim actions that may be taken to reduce human
235 exposure to the priority chemical substance until a feasible alternative is available;

236 vii. use the chemicals categorization list developed by the institute and other published
237 chemical lists, including government lists of substances used in industry or in consumer
238 products, to assist in identifying potential safer alternatives;

239 viii. seek comments from the science advisory board, the advisory committee and
240 members of the public, including all regions of the commonwealth;

241 ix. publish the results of the safer alternatives assessment report; and
242 x. periodically review the safer alternative assessment report and its findings with the
243 advisory committee and the council and revise such report as necessary to update it and to
244 address new recommendations. Revised reports shall be made available to the public for
245 comment, and final revised reports shall be published. Such periodic reviews shall be conducted
246 no less frequently than once every five (5) years.

247 (h) In the event that a priority chemical substance to be assessed is a pesticide, the
248 institute shall contract with resources at the University of Massachusetts at Amherst, including
249 the Cooperative Extension Service, for assistance and guidance in assessing agricultural uses of
250 such substance.

251 (i) In the event that a priority chemical substance to be assessed is used for medical
252 purposes, the institute shall contract with resources at the University of Massachusetts at
253 Worcester for assistance and guidance in assessing medical uses of such substance.

254 (j) Sections 24 through 28 inclusively shall not apply to medical devices.

255 Section 26. (a) The institute shall present each completed safer alternatives assessment
256 report to the council. The council shall use the completed report to identify uses of the priority
257 chemical substance that pose a significant hazard to human health or the environment, with
258 highest priority given to uses that adversely impact children, infants, developing fetuses, and
259 workers, and other vulnerable populations. In identifying such uses of the priority chemical
260 substance, the council shall consider both uses of the priority chemical substance itself as well as
261 uses of consumer products that contain the priority chemical substance. The council shall
262 designate any such uses as priority chemical substance uses.

263 (b) Based on the information and recommendations of the completed safer alternatives
264 assessment report, the council shall also determine whether one or more feasible safer
265 alternatives exist for a priority chemical substance in a priority chemical substance use, and shall
266 identify all such feasible safer alternatives in its designation.

267 Section 27. (a) Not later than eighteen (18) months after the council identifies priority
268 chemical substance uses, the department, in consultation with the institute, the office, the
269 advisory committee, and other agencies as appropriate, shall prepare a chemical action plan for
270 the priority chemical substance, which addresses the priority chemical substance use(s)
271 designated by the council. The chemical action plan shall include draft regulations, for review
272 by the council and members of the public.

273 (b) A chemical action plan addressing a priority chemical substance for which feasible
274 safer alternatives have been identified for one or more designated priority uses shall establish a
275 goal of accomplishing the substitution of the identified safer alternative(s) for the priority
276 chemical substances in those designated priority chemical substance uses as expeditiously as
277 possible. The chemical action plan shall establish requirements through which manufacturers
278 and users of such priority chemical substance shall accomplish this goal, and shall also describe
279 actions to be undertaken by appropriate state agencies to ensure the goal of the plan is met.

280 i. Where possible, the chemical action plan shall seek to strengthen Massachusetts
281 business and develop job opportunities, and to coordinate state activities to accomplish this goal.
282 In preparing the chemical action plan, the department shall consult with the institute, the office,
283 and other relevant state agencies and authorities to identify and plan for coordinated actions of
284 these agencies and authorities to achieve the plan's goal.

285 ii. To accomplish the goals established in this section, a chemical action plan for a
286 priority chemical substance use with feasible alternatives shall:

287 a. identify specific actions that manufacturers and users of priority chemical substances
288 shall be required to implement;

289 b. require substitution of a safer alternative;

290 c. establish schedules, timelines, and deadlines for achieving substitution of the priority
291 chemical substance with safer alternatives, for specified priority uses;

292 d. where appropriate, require manufacturers or users of priority chemical substances to
293 prepare and submit to the department plans to effect the substitution(s); and

294 e. provide for technical assistance to manufacturers and users of priority chemical
295 substances.

296 iii. In establishing deadlines and schedules for substituting safer alternatives for priority
297 chemical substances, the department shall consider the potential impacts to human health and the
298 environment of the continued use of the priority chemical substance. If children or workers will
299 continue to be exposed to one or more priority chemical substances during the period in which
300 substitution is being implemented, then the chemical action plan shall include measures a
301 manufacturer or user of a priority chemical substance, as appropriate, shall take to eliminate or
302 reduce exposure of a priority chemical substance to those populations.

303 iv. The timetable for completing substitutions established in a chemical action plan shall
304 take into consideration the financial needs of the manufacturers and users of the priority
305 chemical substance.

306 v. Where substitution planning requirements are imposed on large quantity toxics users or
307 toxics users within priority user segments, those toxics users shall be exempt from the
308 requirements of this chapter for that particular priority chemical substance for as long as the
309 substitution requirements are in effect.

310 (c) Where the council has not identified feasible safer alternatives for one or more
311 priority uses of a priority chemical substance, the chemical action plan shall: identify steps that
312 manufacturers and users of a priority chemical substance, state agencies and others shall take to
313 identify or develop a feasible safer alternative for the priority chemical substance use; shall
314 require manufacturers and users of priority chemical substances to reduce human exposure to
315 and environmental contamination from the priority chemical substance in that use; where
316 possible seek to strengthen Massachusetts business and develop job opportunities; and
317 coordinate state activities to accomplish this goal. In preparing the chemical action plan, the
318 department shall consult with the institute, the office, and other relevant state agencies and
319 authorities to develop a plan that coordinates the actions of these agencies and authorities to
320 achieve the plan's goal. The department shall consider the potential impacts to human health and
321 the environment of the continued and unmitigated use of the priority chemical substance. The
322 chemical action plan for priority uses of a priority chemical substance for which the council has
323 not identified a feasible safer alternative may include, but shall not be limited to, the following:

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

327 ii. where appropriate, requirements for handling, storage and/or waste management, as
328 appropriate to reduce exposure to workers and consumers to the priority chemical substance in
329 priority uses;

330 iii. requirements for consumer product labeling and other notification to users that a
331 consumer product contains a priority chemical substance and advice on the proper handling and
332 disposal to minimize human exposure to the priority chemical substance; and

333 iv. limitations on certain continued uses of the priority chemical substance in specific
334 applications, as appropriate.

335 (d) Each chemical action plan shall include draft regulations required for
336 implementation. Such regulations shall include appropriate requirements for manufacturers and
337 users of priority chemical substances to file with the department plans to achieve compliance,
338 periodic reports about progress toward implementation or about continued use of the priority
339 chemical substance, and periodic certifications of compliance with any substitution or risk
340 reduction requirements, or alternatively:

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

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

348 for a particular use of the substance; provided, however, that such waiver application shall
349 include:

350 a. identification of the specific use of the priority chemical substance for which a waiver
351 is sought;

352 b. identification of all alternatives considered and their cost and feasibility considerations;

353 c. the basis for finding that there is no feasible safer alternative;

354 d. documentation of any efforts to be taken to minimize the use of the priority chemical
355 substance and of human and environmental exposures to such substance until safer alternatives
356 are found and implemented; and

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

359 (e) In deciding whether to grant a waiver, the department shall consider: (i) whether
360 there is a need for the use of the substance; (ii) whether no safer alternative is feasibly available;
361 and (iii) the impact on the economic viability of Massachusetts businesses. Waivers shall not be
362 granted for more than three years at a time. In deciding whether to grant a waiver application,
363 the department may consult with the institute, the office, and the department of economic
364 development.

365 (f) After the department has prepared a draft chemical action plan, including draft
366 regulations, the draft plan shall be submitted to the council, and to the public for comment
367 pursuant to chapter 30A. The final chemical action plan (which shall contain the department's

368 final regulations) shall be approved by the council prior to promulgation of the regulations by the
369 department.

370 (g) A chemical action plan may be updated and amended from time to time by the
371 department to reflect new scientific and/or technical information about the hazards posed by a
372 priority chemical substance, the availability a safer alternatives for a priority chemical substance
373 in a particular priority use, the feasibility of substituting a safer alternative for a priority chemical
374 substance, new priority uses of a priority chemical substance, and other information without
375 limitation. Any such revised chemical action plan shall contain draft implementing regulations
376 prepared by the department. Once a final revised chemical action plan is approved by the
377 council, the department shall promulgate final implementing regulations.

378 Section 28. Certain functions provided for in this chapter may be transferred to or carried
379 out in cooperation with an interstate entity. The interstate entity may, among other functions:
380 compile and categorize chemical lists, produce alternatives assessment reports; develop model
381 chemical action plans and consumer product or chemical use registries. The department may
382 promulgate regulations to carry out this section.

383 SECTION 8. Paragraph (B) of section 21 of said chapter 21I of the General Laws, as so
384 appearing, is hereby amended, in line 9, by inserting after the word “twenty” the following
385 words: “ or (iii) violates any requirement of sections 24 through 28, inclusive,”

386 SECTION 9. Section 21 of said chapter 21I of the General Laws, as so appearing, is
387 hereby amended, in line 25, by inserting after subsection (C) the following subsection:

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

390 SECTION 10. Notwithstanding any general or special law to the contrary, an employer
391 separating one or more individuals from employment as a result of this chapter shall notify the
392 Department of Workforce Development at the time of separation. The local Workforce
393 Investment Board shall work with the Rapid Response Team set aside program within the
394 Department of Workforce Development to determine a separated individual's eligibility for
395 benefits under the set aside program. The Rapid Response Team shall establish criteria to
396 determine eligibility for benefits under the set aside program. Any individual deemed eligible
397 for benefits under this act shall be entitled to receive re-training, subject to the approval of the
398 Rapid Response Team, sufficient to qualify the individual for re-employment at a wage not less
399 than the wage he or she was receiving at the time of separation from employment. Any
400 individual deemed eligible for re-training benefits under this act shall also be eligible to receive
401 unemployment benefits during the entire period that he or she remains enrolled in, and in
402 compliance with, the requirements of any such approved retraining program.

403 SECTION 11. Chapter 21I is hereby amended by inserting after section 11 the following
404 section:

405 Section 11A. The department of environmental protection, in consultation with the Toxic
406 Use Reduction Institute at the University of Massachusetts at Lowell, shall prepare chemical
407 action plans for the following three (3) chemicals and specific uses: cadmium as found in
408 children's products, trichloroethylene as found in industrial degreasers, and nonylphenol
409 ethoxylates as found in household cleaning products.

410 The chemical action plans shall include draft regulations, for review by the council and
411 members of the public. Where possible, the chemical action plan shall seek to strengthen

412 Massachusetts business and develop job opportunities, and to coordinate state activities to
413 accomplish this goal. In preparing the chemical action plan, the department shall consult with
414 the institute, the office, and other relevant state agencies and authorities to identify and plan for
415 coordinated actions of these agencies and authorities to achieve the plan's goal.

416 To accomplish the goals established in this section, a chemical action plan for these three
417 chemical substances' use with feasible alternatives shall:

418 (a) identify specific actions that manufacturers and users of these chemical substances
419 shall be required to implement;

420 (b) require substitution of a safer alternative;

421 (c) establish schedules, timelines, and deadlines for achieving substitution of these
422 chemical substances with safer alternatives, for specified uses;

423 (d) where appropriate, require manufacturers or users of these chemical substances to
424 prepare and submit to the department plans to effect the substitution(s); and

425 (e) provide for technical assistance to manufacturers and users of these chemical
426 substances.

427 In establishing deadlines and schedules for substituting safer alternatives under this
428 section, the department shall consider the potential impacts to human health and the environment
429 of the continued use of the priority chemical substance. If children or workers will continue to
430 be exposed to these three chemical substances during the period in which substitution is being
431 implemented, then the chemical action plan shall include measures a manufacturer or user of one

432 of these chemical substances, as appropriate, shall take to eliminate or reduce exposure of these
433 chemical substances to those populations.

434 The timetable for completing substitutions established in a chemical action plan shall take
435 into consideration the financial needs of the manufacturers and users of the chemical substance.

436 Where substitution planning requirements are imposed on large quantity toxics users or
437 toxics users within user segments, those toxics users shall be exempt from the requirements of
438 this chapter for that particular chemical substance for as long as the substitution requirements are
439 in effect.

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

454 (a)research into and development of safer alternatives to the use of these chemical
455 substances;

456 (b)where appropriate, requirements for handling, storage or waste management, as
457 appropriate to reduce exposure to workers and consumers to the chemical substance in specified
458 use;

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

462 (d) limitations on certain continued uses of the chemical substance in specific
463 applications.

464 Each chemical action plan shall include draft regulations required for implementation.
465 Such regulations shall include appropriate requirements for manufacturers and users of the
466 chemical substances to file with the department plans to achieve compliance, periodic reports
467 about progress toward implementation or about continued use of the chemical substance, and
468 periodic certifications of compliance with any substitution or risk reduction requirements, or
469 alternatively:

470 (a) 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 (b) 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 substance;

478 In deciding whether to grant a waiver, the department shall consider: (i) whether there is
479 a need for the use of the substance; (ii) whether no safer alternative is feasibly available; and (iii)
480 the impact on the economic viability of Massachusetts businesses. Waivers shall not be granted
481 for more than three years. In deciding whether to grant a waiver application, the department may
482 consult with the institute, the office, and the department of economic development.

483 After the department has prepared a draft chemical action plan, including draft
484 regulations, the draft plan shall be published for public comment pursuant to chapter 30A. The
485 final chemical action plan shall contain the department's final regulations and shall be approved
486 by the council prior to promulgation of the regulations by the department.

487 A chemical action plan may be updated and amended from time to time by the
488 department to reflect new scientific or technical information about the hazards posed by the
489 chemical substance, the availability a safer alternatives for the chemical substance in a specified
490 use, the feasibility of substituting a safer alternative for the chemical substance, new priority uses
491 of the chemical substance, and other information without limitation. Any such revised chemical
492 action plan shall contain draft implementing regulations prepared by the department. Once a
493 final revised chemical action plan is approved by the council, the department shall promulgate
494 final implementing regulations.

495 SECTION 12. Sections 1, 2 and 4 through 10 of this act shall be effective January 1,
496 2019.

SECTION 13. Sections 3 and 11 of this act shall be effective upon passage.