

HOUSE No. 939

The Commonwealth of Massachusetts

PRESENTED BY:

James K. Hawkins

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 Massachusetts toxic free kids.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/18/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>2/23/2021</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/26/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>4/15/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>5/10/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>7/22/2021</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>12/6/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/25/2022</i>

HOUSE No. 939

By Mr. Hawkins of Attleboro, a petition (accompanied by bill, House, No. 939) of James K. Hawkins, Tami L. Gouveia and Michelle M. DuBois for legislation to direct the Department of Environmental Protection to publish a toxic chemicals of concern consumer products list. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act for Massachusetts toxic free kids.

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. Chapter 21A of the General Laws is hereby amended by inserting after
2 section 26 the following sections:-

3 Section 27. For the purposes of sections 27 through 31, inclusive, the following terms
4 shall have the following meanings unless the context clearly requires otherwise:-

5 “Board”, the science advisory board of the Toxics Use Reduction Institute at the
6 University of Massachusetts Lowell.

7 “Children”, natural persons under the age of 12.

8 “Children’s product”, consumer products for use by children including: toys; children's
9 cosmetics; children's jewelry; a product to help a child with sucking or teething, to facilitate
10 sleep, relaxation, or the feeding of a child, or to be worn as clothing by a child; child car seats,
11 school supplies, personal care products, children’s novelty products, children’s bedding,

12 furniture, and furnishings” This includes products that meet any of the following conditions:
13 represented in its packaging, display, or advertising as appropriate for use by children; sold in
14 conjunction with, attached to, or packaged together with other products that are packaged,
15 displayed, or advertised as appropriate for use by children; or sold in any of the following: retail
16 store, catalogue, or online website, in which a person exclusively offers for sale products that are
17 packaged, displayed, or advertised as appropriate for use by children; or a discrete portion of a
18 retail store, catalogue, or online website, in which a person offers for sale products that are
19 packaged, displayed, or advertised as appropriate for use by children.

20 “Council”, the administrative council of the toxics use reduction act as established in
21 chapter 21I of the General Laws.

22 "Dangerous chemical" means (a) the following chemicals:

23 CASRN13674-87-8 Tris (1, 3 dichloro-2-propyl) phosphate

24 CASRN71-43-2 Benzene

25 CASRN7439-92-1 lead and compounds (inorganic)

26 CASRN7439-97-6 Mercury and mercury compounds, including methyl 46 mercury
27 (CASRN 22967-92-6)

28 CASRN50-00-0 Formaldehyde

29 CASRN1332-21-4 Asbestos

30 CASRN7440-38-2 Arsenic and arsenic compounds including arsenic trioxide (CASRN
31 1327-53-3) 51 and dimethyl arsenic (CASRN 75-60-5)

32 CASRN7440-43-9 Cadmium

33 Any chemicals in the class of per-or polyfluoroalkyl substances

34 (b) a chemical adopted by the department pursuant to section 28 (d) (3) of this title.

35 “Department”, the department of environmental protection.

36 “De minimis level”, (a) for a hazardous chemical that is an intentionally added chemical
37 in a component of a consumer product, the practical quantification limit; (b) for a hazardous
38 chemical that has a contaminant present in a component of a consumer product, a concentration
39 of 100 parts per million; or (c) for an engineered nanoobject there shall be no de minimis level.

40 “Engineered nanoobject”, a material with 1, 2 or 3 external dimensions in the nanoscale.

41 “IC2”, the Interstate Chemicals Clearinghouse, an association of state, local, and tribal
42 governments that promotes a clean environment, healthy communities, and a vital economy
43 through the development and use of safer chemicals and products.

44 “Manufacturer”, any person, firm, association, partnership, corporation, governmental
45 entity, organization, combination or joint venture which produces a consumer product containing
46 a chemical listed on the toxic chemicals in consumer products list, as established in section 28, or
47 an importer or domestic distributor of a consumer product containing a chemical listed on the
48 toxic chemicals in consumer products list and that is produced in a foreign country

49 “Nanoscale”, size range from approximately 1 nanometers to 100 nanometers.

50 “Practical quantification limit”, the lowest concentration of a chemical that can be
51 reliably measured within specified limits of precision, accuracy, representativeness,

52 completeness and comparability during routine laboratory operating conditions. The practical
53 quantification limit is

54 based on scientifically defensible, standard analytical methods. The practical
55 quantification limit for a given chemical may be different depending on the matrix and the
56 analytical method used.

57 “Institute”, the Toxics Use Reduction Institute as established in chapter 21I of the
58 General Laws.

59 “Toy”, a product designed or intended by the manufacturer to be used by a child at play.

60 Section 28. Toxic Chemicals in Consumer Products List.

61 (a) No later than 180 days after the effective date of this section, the Massachusetts
62 Department of Environmental Protection , in consultation with the the Toxics Use Reduction
63 Institute Administrative Council, and the Science Advisory Board, shall publish the Toxic
64 Chemicals of Concern in consumer products list, hereinafter referred to as “the chemicals of
65 concern list”, which shall be available to the public on the department’s website.

66 (b) Criteria for listing such toxic chemicals in consumer products pursuant to subsection
67 (a) shall include chemicals recognized as carcinogens, mutagens and reproductive toxins;
68 chemicals recognized as persistent, bioaccumulative and toxic chemicals; chemicals recognized
69 as endocrine disruptors; and other chemicals of equivalent concern as determined by the institute,
70 in consultation with the science advisory board. At a minimum, the list shall include the
71 chemicals listed in the State of Vermont State Chemicals of Concern, State of Oregon Chemicals
72 of Concern, State of New York Chemicals of Concern, Washington State list of Chemicals of

73 Concern and the State of Maine List of Chemicals of High Concern. At least every 4 years, the
74 Department of Environmental Protection, in consultation with the Toxics Use Reduction
75 Institute, Administrative Council, and the Science Advisory Board, shall refine the list to
76 incorporate new scientific information and data, and the council shall publish a revised version
77 of the list, as needed. Failure to refine the list shall not invalidate the list.

78 (c) In preparing the chemicals of concern list, the institute may rely on additional
79 published authoritative lists of chemical categorizations including, but not limited to, the
80 Canadian

81 Domestic Substances List Categorization, the European Commission list of Substances of
82 Very High concern, the California Safer Consumer Products list of Chemicals of Concerns, and
83 the International Agency for Research on Cancer list of carcinogens.

84 Section 29 Dangerous Chemicals List

85 No later than 180 days after the effective date of this section, the council, in consultation
86 with the board, the committee, and the institute, shall publish the dangerous chemicals in
87 children's products list, hereinafter referred to as "the dangerous chemicals list", which shall be
88 available to the public on the department's website.

89 (a) The department shall include the following chemicals on the dangerous chemicals
90 list"

91 CASRN13674-87-8 Tris (1, 3 dichloro-2-propyl) phosphate

92 CASRN71-43-2 Benzene

93 CASRN7439-92-1 lead and compounds (inorganic)

94 CASRN7439-97-6 Mercury and mercury compounds, including methyl 46 mercury
95 (CASRN 22967-92-6)

96 CASRN50-00-0 Formaldehyde

97 CASRN1332-21-4 Asbestos

98 CASRN7440-38-2 Arsenic and arsenic compounds including arsenic trioxide (CASRN
99 1327-53-3) 51 and dimethyl arsenic (CASRN 75-60-5)

100 CASRN7440-43-9 Cadmium

101 Any chemicals in the class of per-or polyfluoroalklyl substances

102 (b) The department, in consultation with the Toxic Use Reduction Institute, Science
103 Advisory Board, and Administrative Council, may identify a chemical as a dangerous chemical
104 if, upon such review, it is present in a children's product and meets any of the following criteria:

105 (i) The chemical or its metabolites have been found through biomonitoring to be present
106 in humans;

107 (ii) The chemical has been found through sampling and analysis to be present in
108 household dust, indoor air, drinking water or elsewhere in the home environment;

109 (iii) The chemical has been found through monitoring to be present in fish, wildlife or the
110 natural environment; or

111 (iv) The sale or use of the chemical or a children's product containing the chemical has
112 been banned in another state or states within the United States because of the health effects of
113 such chemical.

114 (c) The department, in consultation with the Toxic Use Reduction Institute, may remove
115 a chemical from the list of dangerous chemicals if, upon review, it determines on the basis of
116 credible scientific evidence that such chemical no longer meets the criteria for listing under
117 paragraph (b) of this subdivision.

118 Section 30. Not later than July 31, 2023, the department shall promulgate regulations that
119 require a manufacturer, as defined in section 27, of a children's product for sale in the
120 commonwealth that contains a chemical that is included on the list in an amount greater than a de
121 minimis level to notify the department in writing on a biannual basis. If the listed chemical is an
122 engineered nanoobject then there shall be no de minimis level for the notification threshold and
123 notification of the intentional manufacture or addition of nanoobjects is required regardless of
124 amount. This written notice must include the following information:

125 (1) the name of the chemical used or produced and its chemical abstracts service registry
126 number; (2) a brief description of the product or product component containing the chemicals.
127 This must include the Global Product Classification product brick description; (3) The brand
128 name, product model, and the universal product code (UPC) if the product has such a code

129 (4) a description of the function of the chemical in the product; (5) the amount of the
130 chemical used in each unit of the product or product component, which may be reported in
131 ranges, rather than the exact amount; (6) the name and address of the manufacturer and the name,
132 address, and phone number of a contact person for the manufacturer, (7) The function of the
133 chemical in the product.

134 (5) A manufacturer may report ranges of the amount of a chemical in a children's product,
135 rather than the exact amount, provided that if there are multiple chemical values for a given

136 component in a particular product category, the manufacturer shall use the largest value for
137 reporting.

138 The ranges are as follows:

139 Equal to or more than the PQL but less than 100 ppm (0.01%).

140 Equal to or more than 100 ppm (0.01%) but less than 500 ppm (0.05%)

141 Equal to or more than 500 ppm (0.05%) but less than 1,000 ppm (0.1%)

142 Equal to or more than 1,000 (0.1%) ppm but less than 5,000 ppm (0.5%).

143 Equal to or more than 5,000 ppm (0.5%) but less than 10,000 ppm (1.0%)

144 Equal to or more than 10,000 p

145 Section 31 (a) By January 1, 2024, the department shall make reported information about
146 toxic chemicals in children's products available to the public via the IC2 database. The
147 department may authorize the IC2 to maintain information on behalf of Massachusetts including,
148 but not

149 limited to, information regarding chemicals contained in children's products and
150 dangerous chemicals pursuant to section 28. At a minimum, the IC2 database shall include
151 chemical names, chemical abstracts service registry numbers, product name, model and universal
152 product code, manufacturer, concentration of the chemical in the product, which can be
153 expressed in a range, and other information that the department determines. In creating this
154 database the department may co-operate with other states that have made similar data publicly
155 available.

156 Section 33 Notice. (a) A manufacturer of a children's product containing a dangerous
157 chemical shall notify persons that offer the children's prod-uct for sale or distribution in the state,
158 in a form prescribed by the department, of the presence of such dangerous chemical, and provide
159 such persons with information regarding the toxicity of such chemical.

160 Section 33 Sales prohibition on dangerous chemicals Effective INSERT no person shall
161 distribute, sell or offer for sale in this state a children's product containing chemicals on the
162 dangerous chemicals list.

163 No later than three years after a chemical is added to the dangerous chemicals list, no
164 person shall distribute, sell, or offer for sale in this state a children's product that contains the
165 chemical added to the dangerous chemicals list, pursuant to Section 29(b) of this title.

166 This provision shall not apply: (a) to a children's product solely based on its containing an
167 enclosed battery or enclosed electronic components and (b) where state regulation of children's
168 products is preempted by federal law. The commissioner may exempt a children's product from
169 this prohibition if, in the commissioner's judgment, the lack of availability of the children's
170 product could pose an unreasonable risk to public health, safety or welfare.

171 Section 34 Beginning in January 1, 2024, the department shall submit a report on a
172 biennial basis, not later than July 1, on the toxic chemicals in children's products to the joint
173 committee on public health, the joint committee on the environment, natural resources and
174 agriculture, the house and senate committees on global warming and climate change and any
175 other appropriate standing committees of the legislature. The department shall also make the
176 report available on its website and may publicize it through any other appropriate channels. The

177 report shall include policy options for addressing children's products that contain chemicals
178 included on the

179 chemicals of concern and dangerous chemicals lists, including recommendations for
180 additional ways to inform consumers about toxic chemicals in products, policies to protect
181 consumers from hazardous chemical exposures, and chemicals for which it would be beneficial
182 to conduct alternatives assessments.

183 Section 35. The department shall promulgate regulations and fees pertaining to the
184 implementation and enforcement of this act. These regulations and fees shall be issued no later
185 than July 31, 2023.