

HOUSE No. 318

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 relative to toxic free kids.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>1/19/2023</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/20/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/8/2023</i>
<i>Margaret R. Scarsdale</i>	<i>1st Middlesex</i>	<i>2/13/2023</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/13/2023</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>2/13/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/13/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>3/9/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>3/9/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>3/9/2023</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>3/9/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>3/9/2023</i>
<i>Rodney M. Elliott</i>	<i>16th Middlesex</i>	<i>3/9/2023</i>
<i>Steven Owens</i>	<i>29th Middlesex</i>	<i>3/9/2023</i>
<i>Simon Cataldo</i>	<i>14th Middlesex</i>	<i>3/9/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/9/2023</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>3/9/2023</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>3/9/2023</i>

<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>3/9/2023</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>3/9/2023</i>
<i>William J. Driscoll, Jr.</i>	<i>7th Norfolk</i>	<i>3/9/2023</i>
<i>Jeffrey Rosario Turco</i>	<i>19th Suffolk</i>	<i>3/23/2023</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>3/29/2023</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>3/31/2023</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>3/31/2023</i>
<i>Adrienne Pusateri Ramos</i>	<i>14th Essex</i>	<i>4/10/2023</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>4/10/2023</i>
<i>Christopher Richard Flanagan</i>	<i>1st Barnstable</i>	<i>4/10/2023</i>
<i>Jessica Ann Giannino</i>	<i>16th Suffolk</i>	<i>4/10/2023</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>4/10/2023</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>4/12/2023</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>4/27/2023</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>6/14/2023</i>
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>6/26/2023</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>9/19/2023</i>
<i>Shirley B. Arriaga</i>	<i>8th Hampden</i>	<i>11/6/2023</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>11/14/2023</i>

HOUSE No. 318

By Representative Hawkins of Attleboro, a petition (accompanied by bill, House, No. 318) of James K. Hawkins and others for legislation to direct the Department of Environmental Protection to publish a toxic chemicals of concern consumer products list. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 939 OF 2021-2022.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninety-Third General Court
(2023-2024)**
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An Act relative to 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 27 the following section:-

3 Section 28. (a) For the purposes of this section, the following terms shall have the
4 following meanings unless the context clearly requires otherwise:

5 “Authoritative body”, is an agency or formally organized program or group that the
6 department of environmental protection, in consultation with the Toxics Use Reduction Institute
7 at the University of Massachusetts Lowell, has identified as having expertise in the identification
8 of chemicals causing cancer and other toxicity; provided, that these authoritative bodies shall
9 include, but are not limited to: (i) the American Conference of Governmental Industrial

10 Hygienists; (ii) the federal Environmental Protection Agency; (iii) the European Chemicals
11 Agency; (iv) the International Agency for Research on Cancer; (v) the National Toxicology
12 Program; and (vi) the Occupational Safety Health Administration.

13 “Chemical”, is a substance with distinct molecular composition and the breakdown
14 products of the substance that form through decomposition, degradation, or metabolism or a
15 group of structurally related substances and the breakdown products of the substances that form
16 through decomposition, degradation, or metabolism.

17 “Chemical class”, is groupings that relate chemicals by similar features including
18 classifications by structure, physical properties, or other factors.

19 “Children”, are natural persons 12 years of age and under.

20 “Children’s product”, consumer products intended, made or marketed for use by
21 children 12 years of age or under , including: (i) toys; (ii) children’s clothing; (iii) children's
22 cosmetics and personal care products; (iv) children's jewelry and novelty products; (v) children’s
23 school supplies; (vi) children’s arts and crafts supplies, including model making supplies (vii)
24 children’s bedding, furniture, and furnishings; (viii) child car seats; (ix) products to help a child
25 with sucking or teething, or to facilitate sleep, relaxation, or the feeding of a child; (x) artificial
26 turf fields installed on school properties, publicly owned properties, or intended for use by
27 children under the age of 18; (xi) products that meet any of the following conditions: represented
28 in its packaging, display, or advertising as appropriate for use by children, sold in conjunction
29 with, attached to, or packaged together with other products that are packaged, displayed, or
30 advertised as appropriate for use by children sold in a retail store, catalogue, or online website, in
31 which a person exclusively offers for sale products that are packaged, displayed, or advertised as

32 appropriate for use by children, or sold in a discrete portion of a retail store, catalogue, or online
33 website, in which a person offers for sale products that are packaged, displayed, or advertised as
34 appropriate for use by children; provided, however, that “children’s product” shall not include:
35 (i) batteries; (ii) slings and catapults; (iii) sets of darts with metallic points; (iv) toy steam
36 engines; (v) bicycles and tricycles; (vi) video toys that can be connected to video screen and are
37 operated at a nominal voltage exceeding twenty-four volts; (vii) chemistry sets; (viii) consumer
38 and children's electronic products, including but not limited to personal computers, audio and
39 video equipment, calculators, wireless phones, game consoles, and handheld devices
40 incorporating a video screen, used to access interactive software and their associated peripherals;
41 (ix) interactive software, intended for leisure and entertainment, including computer games and
42 their storage media, including compact disks; (x) BB guns, pellet guns and air rifles; (xi) snow
43 sporting equipment, including skis, poles, boots, snow boards, sleds and bindings; (xii) roller
44 skates; (xiii) scooters; (xiv) model rockets; (xv) athletic shoes with cleats or spikes; (xvi)
45 pocketknives and multitools; (xvii) food and beverages and food and beverage packaging
46 regulated by the United States Food and Drug Administration or the United States Department of
47 Agriculture; (xviii) pharmaceutical products and biologics; and (xix) medical devices, as defined
48 in the federal Food, Drug, and Cosmetic Act, U,S,C, 21 section 321(h).

49 “Contaminant”, is trace amounts of chemicals that are incidental to manufacturing and
50 that serve no intended function in the product component, including, but not limited to: (i)
51 unintended by-products of chemical reactions during the manufacture of the product component;
52 (ii) trace impurities in feedstock; (iii) incompletely reacted chemical mixtures; and (iv)
53 degradation products.

54 “De minimis level”, (i) for a chemical that is an intentionally added chemical in a
55 component of a consumer product, the practical quantification limit; (ii) for a chemical that has a
56 contaminant present in a component of a consumer product, a concentration of 100 parts per
57 million; or (iii) for an engineered nanoobject, there shall be no de minimis level.

58 “Department”, the department of environmental protection.

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

61 “Government entity”, a federal or state government agency.

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

65 “Institute”, the Toxics Use Reduction Institute established in section 6 of chapter 21I.

66 “Manufacturer”, any person, firm, association, partnership, corporation, governmental
67 entity, organization, combination or joint venture which produces a children’s product or an
68 importer or domestic distributor of a children’s product that is produced in a foreign country.

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

70 “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS”, are substances that include
71 any member of the class of fluorinated organic chemicals containing at least one fully fluorinated
72 carbon atom.

73 “Practical quantification limit”, is the lowest concentration of a chemical that can be
74 reliably measured within specified limits of precision, accuracy, representativeness,
75 completeness, and comparability during routine laboratory operating conditions; provided, that
76 the practical quantification limit is based on scientifically defensible, standard analytical
77 methods; and provided further, that the practical quantification limit for a given chemical may be
78 different depending on the matrix and the analytical method used.

79 “Regulated perfluoroalkyl and polyfluoroalkyl substances” or “regulated PFAS”, are
80 substances that include either: (i) PFAS that a manufacturer has intentionally added to a product
81 and that have a functional or technical effect in the product, including, but not limited to, the
82 PFAS components of intentionally added chemicals and PFAS that are unintentional breakdown
83 products of an added chemical that also have an afunctional or technical effect in the product; or
84 (ii) the presence of PFAS in a product or product component at or above 100 parts per million, as
85 measured in total organic fluorine.

86 A “Safer alternative”, is an alternative whose potential to harm human health is less than
87 that of the use of a high-priority chemical that it could replace.

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

90 (b) No manufacturer, wholesaler, or retailer shall knowingly sell, offer for sale or
91 distribute for use a children’s product or product component containing regulated PFAS.

92 (c) The department, in consultation with the institute, shall maintain and publish a list of
93 toxic chemicals of concern in children’s products, which shall be available to the public on the
94 department’s website.

95 The chemicals of concern list shall include chemicals identified by a government entity
96 or other authoritative body or identified based on scientific evidence as being :

97 (1) a carcinogen or mutagen;

98 (2) persistent or bio-accumulative and toxic

99 (3) an endocrine disruptor;

100 (4) a reproductive or developmental toxicant;

101 (5) a neurotoxicant;

102 (6) a respiratory or skin sensitizer; and

103 (7) any other chemical of equivalent concern, as determined by the department, in
104 consultation with the institute.

105 In developing the chemicals of concern list, the department shall consult published
106 authoritative lists of chemical categorizations, including, but not limited to, the Maine Chemicals
107 of Concern List, New York Chemicals of Concern List, Oregon Chemicals of Concern List,
108 Vermont Chemicals of Concern List, Canadian Domestic Substances List Categorization, the
109 European Commission list of Substances of Very High concern, and the International Agency for
110 Research on Cancer list of carcinogens.

111 As needed, but not less than every 3 years, the department, in consultation with the
112 institute, shall update the chemicals of concern list.

113 (d) Not later than 180 days after a chemical is added to the chemicals of concern list
114 established under subsection (c), and biennially thereafter, a manufacturer of a children's product

115 for sale in the commonwealth that contains a chemical in an amount greater than a de minimis
116 level shall notify the department in writing; provided, however, if the children's product contains
117 a listed chemical that is an engineered nanoobject, the manufacturer shall notify the department
118 in writing regardless of the amount of chemical present. The manufacturer's written notice shall
119 include:

120 (1) the name of the chemical used or produced and its chemical abstracts service registry
121 number;

122 (2) a brief description of the product or product component containing the chemicals,
123 including the Global Product Classification product brick description;

124 (3) the brand name, product model, and the universal product code if the product has such
125 a code;

126 (4) a description of the function of the chemical in the product;

127 (5) the amount of the chemical used in each unit of the product or product component,
128 which may be reported in ranges, rather than the exact amount; and

129 (6) the name and address of the manufacturer and the name, address, and phone number
130 of a contact person for the manufacturer.

131 The department is authorized to direct submission of such reports to the IC2 and may
132 otherwise provide for reciprocal data sharing with other states which require reporting of the
133 same information. The department shall specify procedures for the provision of such notice by
134 manufacturers to the IC2.

135 (e) The department shall make the information reported under subsection (d) available to
136 the public via the department's website and via linkage to relevant databases on the IC2 website.

137 (f) The department in consultation with the institute, shall maintain and publish a list of
138 high-priority chemicals in children's products, which shall be available to the public on the
139 department's website.

140 The department may identify a chemical as a high-priority chemical if, upon such review:

141 (i) the chemical or its metabolites have been found through biomonitoring to be present in
142 humans; (ii) the chemical has been found through sampling and analysis to be present in
143 household dust, indoor air, drinking water or elsewhere in the home environment; (iii) the
144 chemical has been scientifically demonstrated to release from the product, resulting in likely
145 exposure to children; or (iv) the sale or use of the chemical or a children's product containing the
146 chemical has been restricted in another state or states within the United States.

147 The department, in consultation with the institute, may remove a chemical from the high-
148 priority chemicals list if, upon review, it determines based on substantial scientific evidence that
149 such chemical no longer meets the criteria for listing under this subsection.

150 Not later than 180 days after a chemical is added to the high-priority chemicals list,
151 manufacturers of a children's product containing such high-priority chemical shall notify persons
152 that offer the children's product for sale or distribution in the state that the product contains a
153 high-priority chemical and shall provide such persons with information regarding toxicity and
154 risk management. Notification shall be provided in a form specified by the department.

155 Not later than 3 years after a chemical is added to the high-priority chemicals list, no
156 person shall distribute, sell or offer for sale in the commonwealth a children's product containing

157 the high-priority chemical, unless a prohibition on the distribution, sale or offer for sale of the
158 children's product would be preempted by federal law or the commissioner exempts the
159 children's product from such prohibition because, in the commissioner's judgment, the lack of
160 availability of the children's product could pose an unreasonable risk to public health, safety or
161 welfare.

162 The department, in consultation with the institute, shall update the high-priority
163 chemicals list at least once every 3 years. At least 3 high-priority chemicals or one chemical
164 class shall be added to the high-priority chemicals list at each update.

165 (g) The department, in consultation with the institute, may periodically publish a list of
166 safer alternative chemicals that may be substituted for the chemicals listed on the high-priority
167 chemicals list established in subsection (f). Manufacturers of children's products containing
168 high-priority chemicals may redesign products to eliminate the need for high-priority chemicals
169 or they may substitute a chemical from the safer alternatives list.

170 Manufacturers may not replace chemicals on the high-priority chemicals list established
171 in subsection (f) with any chemical that is on the chemicals of concern list established in
172 subsection (c) or any chemical that has been identified by a government entity or other
173 authoritative body or is identified based on scientific evidence as having the characteristics of a
174 chemical of concern as described in subsection (c).

175 Manufacturers that seek to replace chemicals on the high-priority chemicals list
176 established in subsection (f) with chemicals that are not on the safer alternative chemicals list
177 established in this subsection shall disclose to the department and institute the chemical
178 substitutes that the manufacturer will use. The manufacturer shall conduct a hazard assessment

179 that explains how the children's product and any substitute chemical the children's product
180 contains, are less hazardous than before the substitution was made. The department shall
181 establish the methodology that a manufacturer must use, and the standards that a children's
182 product must meet, in order to comply with the hazard assessment requirements. Upon the
183 request of the department, manufacturers must submit hazard assessments to the department for
184 review.

185 If the department, in consultation with the institute, requests to review the hazard
186 assessment, the department, in consultation with the institute, may approve or disapprove a
187 hazard assessment within 180 days after its submission. If the department fails to act within 180
188 days, the hazard assessment is deemed approved, and the manufacturer may continue to sell or
189 offer for sale in this state the children's product for which the manufacturer submitted a hazard
190 assessment. If the department disapproves a hazard assessment, the manufacturer may submit a
191 revised hazard assessment for consideration within 180 days of the department's disapproval.

192 (h) The department may conduct testing of children's products sold or offered for sale in
193 the state in order to determine compliance with this act.

194 (i) The department may grant a temporary or permanent waiver to manufacturers of
195 children's products that request a waiver from the requirement to remove or substitute high-
196 priority chemicals. The manufacturer applying for a waiver must demonstrate that the high-
197 priority chemical is not reasonably anticipated to result in exposure based on an analysis of the
198 leachability and bioavailability of the chemical of concern. The department may establish
199 requirements and fees for waiver requests.

200 (j) This section shall apply to chemicals in children's products sold or distributed as new
201 and do not apply to used children's products that are sold or distributed for free at secondhand
202 stores, yard sales, on the internet, or donated to charities.

203 (k) A manufacturer that produces, sells, or distributes a product prohibited from the
204 manufacture, sale, or distribution in the commonwealth under this section shall recall the product
205 and reimburse the retailer or any other purchaser for the product.

206 (l) A manufacturer of products in violation of this section shall be subject to a civil
207 penalty not to exceed \$5,000 for each violation in the case of a first offense. Manufacturers who
208 are repeat violators are subject to a civil penalty not to exceed \$10,000 for each repeat offense.

209 (m) If there are grounds to suspect that a children's product is being offered for sale in
210 violation of this section, the department may request the manufacturer of the children's product
211 to provide a statement of compliance on a form provided by the department within 10 days of
212 receipt of a request from the department. The statement of compliance shall: (i) attest that the
213 children's product does not contain the dangerous chemical; (ii) attest and provide the
214 department with documentation that notification of the presence of the high-priority chemical has
215 been provided to the department or provide notice as required by subsection (f); or (iii) attest that
216 the manufacturer has notified persons that sell the product in this state that the sale of the
217 children's product is prohibited.

218 Retailers who unknowingly sell products that are restricted from sale under this section
219 are not liable under this section.

220 (n) Every 3 years, the department, in consultation with the institute, shall submit a report
221 on the toxic chemicals of concern in children's products to the joint committee on public health,

222 the joint committee on the environment, natural resources and agriculture, and the house and
223 senate committees on global warming and climate change. The report shall include general
224 information and policy recommendations for addressing toxic chemicals in children's products,
225 including, but not limited to: (i) ways, in addition to the IC2, to inform and educate consumers
226 about toxic chemicals in children's products; (ii) ways to protect children from toxic chemical
227 exposures; (iii) progress and challenges in implementing this section; (iv) updated lists of
228 chemicals of concern, high priority chemicals, and safer alternative chemicals; (v) results of
229 reporting, including the number and types of children's products with chemicals of concern or
230 high priority chemicals, amounts used, and the most frequently disclosed chemicals; (vi)
231 information on waiver requests made and granted and compliance and enforcement activities,
232 including testing and penalties; and (vii) any proposed regulations and legislation necessary to
233 carry out the report's recommendations. The department shall make the report available on its
234 website and may publicize it through any other appropriate channels.

235 (o) The department shall promulgate rules and regulations necessary for the
236 implementation and enforcement of this section, including the need for department and institute
237 staffing, website development and management, reporting, and testing and enforcement.

238 SECTION 2. The regulations required by subsection (o) of section 28 of chapter 21A of
239 the General Laws shall be promulgated not later than 1 year after the effective date of this act.

240 SECTION 3. Notwithstanding any general or special law to the contrary, the department
241 of environmental protection, in consultation with the Toxics Use Reduction Institute established
242 in section 6 of chapter 21I of the General Laws, shall publish an initial: (i) list of toxic chemicals
243 of concern in children's products, as required by subsection (c) of section 28 of chapter 21A of

244 the General Laws; (ii) list of high priority chemicals in children’s products, as required by
245 subsection (f) of section 28 of chapter 21A of the General Laws; and (iii) list of safer alternative
246 chemicals in children’s products, as required by subsection (g) of section 28 of chapter 21A of
247 the General Laws, not later than 2 years after the effective date of this act.

248 SECTION 4. Notwithstanding any general or special law to the contrary, the department
249 of environmental protection, in consultation with the Toxics Use Reduction Institute at the
250 University of Massachusetts Lowell, shall submit its first report, as required by subsection (n) of
251 section 28 of chapter 21A of the General Laws, not later than 3 years after the effective date of
252 this act.