

HOUSE No.

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>1/16/2025</i>
<i>Kristin E. Kassner</i>	<i>2nd Essex</i>	<i>1/22/2025</i>
<i>John R. Gaskey</i>	<i>2nd Plymouth</i>	<i>1/27/2025</i>

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

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, as appearing in the 2022 Official
2 Edition, is hereby amended by inserting after section 28 the following new section:-

3 Section 29. (a) For the purposes of this section, the following terms shall have the
4 following meanings unless the context clearly requires otherwise:“Authoritative body”, an
5 agency or formally organized program or group which the department of environmental
6 protection, in consultation with the Toxics Use Reduction Institute at the University of
7 Massachusetts Lowell, has identified as having expertise in the identification of chemicals
8 causing cancer and other toxicity; provided, that these authoritative bodies shall include, but are
9 not limited to: (i) the American Conference of Governmental Industrial Hygienists; (ii) the
10 federal Environmental Protection Agency; (iii) the European Chemicals Agency; (iv) the
11 International Agency for Research on Cancer; (v) the National Toxicology Program; and (vi) the
12 Occupational Safety Health Administration.

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

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

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

“Children’s product”, consumer products intended, made or marketed for use by children 12 years of age or under, including: (i) toys; (ii) children’s clothing; (iii) children's cosmetics and personal care products; (iv) children's jewelry and novelty products; (v) children’s school supplies; (vi) children’s arts and crafts supplies, including model making supplies (vii) children’s bedding, furniture and furnishings; (viii) child car seats; (ix) products to help a child with sucking or teething, or to facilitate sleep, relaxation or the feeding of a child; (x) artificial turf fields installed on school properties, publicly owned properties or intended for use by children under the age of 18; (xi) products that meet any of the following conditions: represented in its packaging, display or advertising as appropriate for use by children, sold in conjunction with, attached to or packaged together with other products that are packaged, displayed or advertised as appropriate for use by children sold in a retail store, catalogue or online website, in which a person exclusively offers for sale products that are packaged, displayed or advertised as appropriate for use by children, or sold in a discrete portion of a retail store, catalogue or online website, in which a person offers for sale products that are packaged, displayed or advertised as appropriate for use by children; provided, however, that “children’s product” shall not include:

(i) batteries; (ii) slings and catapults; (iii) sets of darts with metallic points; (iv) toy steam engines; (v) bicycles and tricycles; (vi) video toys that can be connected to video screen and are operated at a nominal voltage exceeding twenty-four volts; (vii) chemistry sets; (viii) consumer and children's electronic products, including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles and handheld devices incorporating a video screen, used to access interactive software and their associated peripherals; (ix) interactive software, intended for leisure and entertainment, including computer games and their storage media, including compact disks; (x) BB guns, pellet guns and air rifles; (xi) snow sporting equipment, including skis, poles, boots, snow boards, sleds and bindings; (xii) roller skates; (xiii) scooters; (xiv) model rockets; (xv) athletic shoes with cleats or spikes; (xvi) pocketknives and multitools; (xvii) food and beverages and food and beverage packaging regulated by the United States Food and Drug Administration or the United States Department of Agriculture; (xviii) pharmaceutical products and biologics; and (xix) medical devices, as defined in the federal Food, Drug, and Cosmetic Act, U.S.C. 21 section 321(h).

“Contaminant”, trace amounts of chemicals that are incidental to manufacturing and that serve no intended function in the product component, including, but not limited to: (i) unintended by-

products of chemical reactions during the manufacture of the product component; (ii) trace impurities in feedstock; and (iii) incompletely reacted chemical mixtures.

“De minimis level”, (i) for a chemical that is an intentionally added chemical in a component of a consumer product, the practical quantification limit; (ii) for a chemical that has a contaminant present in a component of a consumer product, a concentration to be set by the

department of environmental protection in rulemaking; or (iii) for an engineered nanoobject, there shall be no de minimis level.

“Department”, the department of environmental protection.

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

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

“Intentionally added PFAS”, PFAS that is added to a product, or is in or on the product due to the manufacturing or processing of that product, and the addition of PFAS is known or reasonably ascertainable by the manufacturer and its suppliers, including the use of PFAS or precursors as a processing agent, or mold release agent, and the creation of PFAS via chemical reactions, such as occurs during the fluorination of plastic containers.

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

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

"Known or reasonably ascertainable", all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.

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

“Mouthable”, when used to describe a children’s product or any part of a children’s product, means that an intended use of the product or any part of the product includes being placed in the mouth for any purpose.

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

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

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

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

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

(b) No manufacturer, wholesaler or retailer shall knowingly sell, offer for sale or distribute for use a children’s product or product component containing intentionally added PFAS. PFAS in a children’s product or product component shall be measured in total organic fluorine at a threshold level to be determined by the department.

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

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

(i) a carcinogen or mutagen;

(ii) persistent or bio-accumulative and toxic;

(iii) an endocrine disruptor;

(iv) a reproductive or developmental toxicant;

(v) a neurotoxicant;

(vi) a respiratory or skin sensitizer; and

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

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

116 Chemicals of Concern list, as specified in Title 9, Section 37-0905, of New York law, as the
117 initial chemicals of concern list for Massachusetts.

118 (d) As needed, but not less frequently than every 3 years, the department, in consultation
119 with the institute, shall update the chemicals of concern list.

120 (e) The department, in consultation with the institute, may include a class of chemicals on
121 the list. If the department includes a class of chemicals, the department may exclude from the list
122 specific members of the class of chemicals, or a subclass of chemicals, that do not share
123 the same hazards as the other members of the class of chemicals.

124 (f) In establishing by rule the practical quantification limits for chemicals or classes of
125 chemicals on the list, the department shall consider guidance developed by other federal, state
126 and nongovernmental organizations with the applicable expertise.

127 (g) Not later than 180 days after a chemical or a class of chemicals are added to the
128 chemicals of concern list established under subsection (c), and biennially thereafter, a
129 manufacturer of a children's product for sale in the commonwealth that contains a chemical in an
130 amount greater than a de minimis level shall notify the department in writing; provided,
131 however, if the children's product contains a listed chemical that is an engineered nanoobject, the
132 manufacturer shall notify the department in writing regardless of the amount of chemical present.
133 The manufacturer's written notice shall be submitted electronically in a format to be specified by
134 the department, in consultation with the institute, and shall include:

135 (i) the name of the chemical used or produced and its chemical abstracts service registry
136 number;

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

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

(iv) a description of the function of the chemical in the product;

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

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

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

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

(i) (1) Not less than 3 years after a chemical or a class of chemicals are added to the chemicals of concern list in subsection (c), a manufacturer must remove or make a substitution for the chemical if the chemical is present in a children's product that is:

(a) Mouthable;

(b) A children's personal care product or cosmetic; or

157 (c) Made for, marketed for use by or marketed to children under 3 years of age.

158 (2) A manufacturer with 25 or fewer employees may apply for a 2-year extension of the
159 date specified in paragraph (1) of this subsection to meet the requirements of this section.

160 (3) Manufacturers are exempt from meeting the requirements of this section for
161 children's products described in paragraph (1) of this subsection that contain chemicals of
162 concern for children's health used in children's products at levels that are at or below allowable
163 levels for children's products as established by the Consumer Product Safety Improvement Act
164 of 2008, P.L. 110-314, 122 Stat. 3016, as in effect on Jan 17, 2025.

165 (4) The department may adopt rules providing for additional exemptions from the
166 requirements of this section.

167 (5) For purposes of this subsection, any consumer product safety standard adopted under
168 federal law that establishes allowable levels for children's products of a high priority chemical of
169 concern for children's health used in children's products is presumed to establish the maximum
170 allowable level of the chemical that may be used in children's products that are sold or offered
171 for sale in this state.

172 The department may not require a manufacturer in compliance with the federal standard
173 to also comply with the provisions of this section unless the department establishes in the
174 rulemaking process that a lower maximum allowable level for children's products of a high
175 priority chemical of concern for children's health used in children's products than the allowable
176 level set by the federal standard is necessary to protect human health and welfare. (j) The
177 department, in consultation with the institute, shall maintain and publish a list of high priority

178 chemicals in children's products, which shall be available to the public on the department's
179 website.

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

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

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

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

195 Not later than 3 years after a chemical is added to the high priority chemicals list, no
196 person shall distribute, sell or offer for sale in the commonwealth any children's product
197 containing the high priority chemical, unless a prohibition on the distribution, sale or offer for
198 sale of the children's product would be preempted by federal law or the commissioner exempts
199 the children's product from such prohibition because, in the commissioner's judgment, the lack of

200 availability of the children's product could pose an unreasonable risk to public health, safety or
201 welfare.

202 The department, in consultation with the institute, shall update the high priority chemicals
203 list at least once every 3 years.

204 (k) The department, in consultation with the institute, may periodically publish a list of
205 safer alternative chemicals that may be substituted for the chemicals listed on the chemicals of
206 concern list established in subsection (c) or the high priority chemicals list established in
207 subsection (j). Manufacturers of children's products containing chemicals of concern or high
208 priority chemicals may redesign products to eliminate the need for chemicals of concern or high
209 priority chemicals or they may substitute a chemical from the safer alternatives list.

210 Manufacturers may not replace chemicals on the high priority chemicals list established
211 in subsection (j) with any chemical that is on the chemicals of concern list established in
212 subsection (c) or any chemical that has been identified by a government entity or other
213 authoritative body or is identified based on scientific evidence as having the characteristics of a
214 chemical of concern as described in subsection (c).

215 (l) Manufacturers that seek to replace chemicals on the chemicals of concern list
216 established in subsection (c) or high priority chemicals list established in subsection (j) with
217 chemicals that are not on the safer alternative chemicals list established in this subsection shall
218 disclose to the department and to the institute the chemical substitutes that the manufacturer will
219 use. The manufacturer shall conduct a hazard assessment that explains how the children's
220 product, and any substitute chemical the children's product contains, are less hazardous than
221 before the

substitution was made. The department shall establish the methodology that a manufacturer must use, and the standards that a children's product must meet, to comply with the hazard assessment requirements. Upon the request of the department, manufacturers must submit a hazard assessment to the department for review.

If the department, in consultation with the institute, requests a hazard assessment, the department, in consultation with the institute, may approve or disapprove a hazard assessment within 180 days after its submission. If the department fails to act within 180 days, the hazard assessment is deemed approved, and the manufacturer may continue to sell or offer for sale in this state the children's product for which the manufacturer submitted a hazard assessment for a period of 3 years after the date of submittal of the hazard assessment. If the department disapproves a hazard assessment, the manufacturer may submit a revised hazard assessment for consideration within 180 days after the department's disapproval.

(m) If the department, in consultation with the institute, determines that a hazard assessment as described in subsection (l) is incomplete, the department may obtain the assessment from another party. The manufacturer that submitted the assessment that was determined to be incomplete must pay for the assessment performed by the other party.

(n) A hazard assessment approved or deemed approved is valid for a period of 3 years after the date of submittal of the hazard assessment. A manufacturer must submit an updated hazard assessment, with any additional relevant information, at the end of the 3-year period.

(o) The department may grant a temporary or permanent waiver to manufacturers of children's products that request a waiver from the requirement to remove or substitute high priority chemicals. The manufacturer applying for a waiver must demonstrate that the high

244 priority chemical is not reasonably anticipated to result in exposure based upon an analysis of
245 leachability and bioavailability of the chemical of concern. The department shall establish
246 requirements and fees for waiver requests.

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

249 (q) The manufacturer shall pay a fee upon submission of a report of chemical use
250 pursuant to subsection (g) and upon submission of a waiver request pursuant to subsection (o).
251 The department shall establish a fee schedule to cover the department's reasonable costs in the
252 administration and enforcement of this title. Exclusive of fines and penalties, the state shall only
253 recover its actual cost of administration and enforcement.

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

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

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

263 (u) If there are grounds to suspect that a children's product is being offered for sale in
264 violation of this section, the department may request the manufacturer of the children's product

to provide a statement of compliance on a form provided by the department within 10 days of receipt of a request from the department. The statement of compliance shall: (i) attest that the children's product does not contain the dangerous chemical; (ii) attest and provide the department with documentation that notification of the presence of the high priority chemical has been provided to the department or provide notice as required by subsection (g); or (iii) attest that the manufacturer has notified persons that sell the product in this state that the sale of the children's product is prohibited.

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

(v) Every 3 years, the department, in consultation with the institute, shall submit a report on the toxic chemicals of concern in children's products to the clerks of the house and the senate, the joint committee on public health, the joint committee on the environment and natural resources, the joint committee on consumer protection and professional licensure and the joint committee on children, families and persons with disabilities. The report shall include general information and policy recommendations for addressing toxic chemicals in children's products, including, but not limited to: (i) ways, in addition to the IC2, to inform and educate consumers about toxic chemicals in children's products; (ii) ways to protect children from toxic chemical exposures; (iii) progress and challenges in implementing this section; (iv) updated lists of chemicals of concern, high priority chemicals and safer alternative chemicals; (v) results of reporting, including the number and types of children's products with chemicals of concern or high priority chemicals, amounts used, and the most frequently disclosed chemicals; (vi) information on waiver requests made and granted and compliance and enforcement activities, including testing and penalties; and (vii) any proposed regulations or legislation necessary to

288 carry out the report's recommendations. The department shall make the report available on its
289 website and may publicize it through any other appropriate channels.

290 (w) The department shall promulgate rules and regulations necessary for the
291 implementation and enforcement of this section, including the need for funding for department
292 and institute staffing, website development and management, reporting, and testing and
293 enforcement.

294 SECTION 2. The department of environmental protection, in consultation with the
295 Toxics Use Reduction Institute established in section 6 of chapter 21I of the General Laws, shall
296 promulgate regulations to implement section 29 of chapter 21A of the General Laws, as inserted
297 by this act, no later than 1 year after the effective date of this act.

298 SECTION 3. Notwithstanding any general or special law to the contrary, the department
299 of environmental protection, in consultation with the Toxics Use Reduction Institute established
300 in section 6 of chapter 21I of the General Laws, shall publish an initial list of toxic chemicals of
301 concern in children's products, as required by subsection (c) of section 29 of chapter 21A of the
302 General Laws, as inserted by this act, not later than 1 year after the effective date of this act.

303 SECTION 4. Notwithstanding any general or special law to the contrary, the department
304 of environmental protection, in consultation with the Toxics Use Reduction Institute established
305 in section 6 of chapter 21I of the General Laws, shall publish (i) a list of high priority chemicals
306 in children's products, as required by subsection (j) of section 29 of chapter 21A of the General
307 Laws, as inserted by this act and (ii) list of safer alternative chemicals in children's products, as
308 required by subsection (k) of section 29 of chapter 21A of the General Laws, as inserted by this
309 act, not later than 3 years after the effective date of this act.

310 SECTION 5. Notwithstanding any general or special law to the contrary, the department
311 of environmental protection, in consultation with the Toxics Use Reduction Institute established
312 in section 6 of chapter 21I of the General Laws, shall submit its first report, as required by
313 subsection (v) of section 29 of chapter 21A of the General Laws, as inserted by this act, not later
314 than 3 years after the effective date of this act.