

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Joanne M. Comerford

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:

Joanne M. Comerford

DISTRICT/ADDRESS:

Hampshire, Franklin and Worcester

SENATE No.

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2564 OF 2023-2024.]

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:

5 “Authoritative body”, an agency or formally organized program or group which 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 and Health Administration.

13 “Chemical”, a substance with a 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”, groupings that relate chemicals by similar features including
18 classifications by structure, physical properties, or other factors.

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

20 “Children’s product”, consumer products intended, made or marketed for use by children
21 12 years of age or under, including: (i) toys; (ii) children’s clothing; (iii) children's cosmetics and
22 personal care products; (iv) children's jewelry and novelty products; (v) children’s school
23 supplies; (vi) children’s arts and crafts supplies, including model making supplies (vii) children’s
24 bedding, furniture and furnishings; (viii) child car seats; (ix) products to help a child with
25 sucking or teething, or to facilitate sleep, relaxation or the feeding of a child; (x) artificial turf
26 fields installed on school properties, publicly owned properties or intended for use by children
27 under the age of 18; (xi) products that meet any of the following conditions: represented in its
28 packaging, display or advertising as appropriate for use by children, sold in conjunction with,
29 attached to or packaged together with other products that are packaged, displayed or advertised
30 as appropriate for use by children sold in a retail store, catalogue or online website, in which a
31 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”, trace amounts of chemicals that are incidental to manufacturing and that
50 serve no intended function in the product component, including, but not limited to: (i) unintended
51 by-products of chemical reactions during the manufacture of the product component; (ii) trace
52 impurities in feedstock; and (iii) incompletely reacted chemical mixtures.

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

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

58 “Department”, the department of environmental protection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

101 (i) a carcinogen or mutagen;

102 (ii) persistent or bio-accumulative and toxic;

103 (iii) an endocrine disruptor;

104 (iv) a reproductive or developmental toxicant;

105 (v) a neurotoxicant;

106 (vi) a respiratory or skin sensitizer; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

154 (i) Mouthable;

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

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

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

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

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

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

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

176 (j) The department, in consultation with the institute, shall maintain and publish a list of
177 high priority chemicals in children's products, which shall be available to the public on the
178 department's website.

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

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

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

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

198 the children's product from such prohibition because, in the commissioner's judgment, the lack of
199 availability of the children's product could pose an unreasonable risk to public health, safety or
200 welfare.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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