

PETITION -- HOUSE

CHIEF SPONSOR:

Representative <<Kaufman>> of <<Lexington>>

(Note in this space if petition is "By Request")

*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 passage of the accompanying bill or resolve.

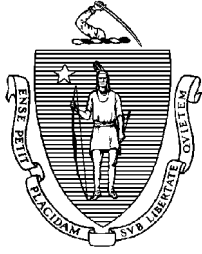
PETITIONERS: LEGISLATOR/CITIZEN	DISTRICT/FULL MAILING ADDRESS
Representative Jay R. Kaufman	15 th Middlesex
Senator Steven A. Tolman	2 nd Suffolk and Middlesex
Representative Peter V. Kocot	1 st Hampshire
Representative David P. Linsky	5 th Middlesex
Senator Pamela P. Resor	Middlesex and Worcester
Representative Douglas W. Petersen	8 th Essex
Representative Michael A. Costello	1 st Essex
Representative Patricia D. Jehlen	27 th Middlesex
Representative Frank I. Smizik	15 th Norfolk
Representative Ellen Story	3 rd Hampshire
Representative Jim Marzilli	23 rd Middlesex
Representative John W. Scibak	2 nd Hampshire
Representative Timothy J. Toomey, Jr.	26 th Middlesex
Representative Anne Paulsen	24 th Middlesex
Representative Kay Khan	11 th Middlesex
Representative Ruth B. Balsler	12 th Middlesex
Representative Deborah D. Blumer	6 th Middlesex
Representative Carl Sciortino	34 th Middlesex
Representative Denis Guyer	2 nd Berkshire
Representative David B. Sullivan	6 th Bristol
Representative Alice K. Wolf	25 th Middlesex
Representative Gloria L. Fox	7 th Suffolk
Senator Susan C. Fargo	3 rd Middlesex
Representative Elizabeth A. Malia	11 th Suffolk
Representative Barbara L'Italien	18 th Essex
Representative Jennifer M. Callahan	18 th Worcester
Representative Stephen Kulik	1 st Franklin
Representative Kathleen M. Teahan	7 th Plymouth

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Senator Mark C. Montigny	2 nd Bristol & Plymouth
Representative Cory Atkins	14 th Middlesex
Representative Geraldine Creedon	11 th Plymouth
Senator Ed Augustus	
Senator Scott P. Brown	Norfolk, Bristol and Middlesex
Senator Cynthia Stone Creem	1 st Middlesex and Norfolk
Senator Thomas M. McGee	3 rd Essex and Middlesex
Senator Robert O'Leary	Cape and Islands
Senator Karen Spilka	
Senator Bruce E. Tarr	1 st Essex and Middlesex
Senator Richard R. Tisei	Middlesex and Essex
Senator Susan C. Tucker	2 nd Essex and Middlesex
Representative Mary E. Grant	6 th Essex

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The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND FIVE

AN ACT

AN ACT FOR A HEALTHY MASSACHUSETTS: SAFER ALTERNATIVES TO TOXIC CHEMICALS

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

SECTION 1. Short Title. This Act shall be known and may be cited as "An Act for a Healthy Massachusetts: Safer Alternatives to Toxic Chemicals."

SECTION 2. Legislative findings.

Whereas, Article 97 of the Constitution of Massachusetts provides that the people shall have the right to clean air and water; and

Whereas, scientific evidence increasingly links many chronic diseases with repeated and increased exposure to toxic substances. These diseases and disorders include: asthma, autism, birth defects, cancers, developmental disabilities, diabetes, endometriosis, infertility, Parkinson's disease, and others; and

Whereas, more than 80,000 synthetic chemicals have been produced for use in the U.S since World War II, yet very few were ever adequately tested for their potential impact on our health. The substances have contaminated the air we breathe, the water and

food we consume, everyday products, our homes, schools, workplaces—and therefore end up in our bodies; and

Whereas, the Massachusetts Zero Mercury Action Plan of the Executive Office of Environmental Affairs demonstrates how an action plan can protect public health from a toxic substance through a gradual program of implementing safer alternatives; and

Whereas the General Court finds that:

With regard to many other toxic substances, the current regulatory system has failed to protect health and environment due to fundamental flaws, namely that it places high burdens on government to act, primarily after the damage is done rather than by prevention through seeking the safest alternatives to toxics as they become available;

That the current regulatory system for toxic chemicals has particularly failed to protect vulnerable populations: the developing fetus and child; people who are vulnerable due to health conditions or genetic predispositions; and low-income communities or disadvantaged workers who are overburdened with greater exposure to these toxic substances;

That Massachusetts is already a leader on environmental health policy as a result of the Toxics Use Reduction Act (TURA), which shows that there are many benefits to businesses and the economy- by implementing safer alternatives for toxic chemicals; however that such act has failed to address the broader need to substantially reduce the use of harmful chemicals in products used in workplaces and homes even though safer alternatives are often available;

That the European Union and other countries have already adopted more restrictive policies regarding the use of toxic chemicals and more health protective requirements for products and are currently considering far reaching revisions of chemicals regulations and, over 37% of Massachusetts trade is with the European Union's Member States, and;

That there are safer alternatives available for many of the toxic substances in use today that will allow businesses to be more competitive by reducing costs associated with health care costs, worker illnesses and turnover, materials handling and tracking, and by opening their products to local, national and international markets, and;

That investing in Massachusetts businesses to assist them in developing and instituting safer alternatives will make Massachusetts a global leader in sustaining an innovative economy based on research, development and production of new materials, products and processes that strengthen our economy while protecting our health and environment;

Therefore, it is the policy of the Commonwealth to ensure the substitution in the use, manufacture, emission and distribution of each of the priority toxic substances, and in consumer products containing the substances, with the safest feasible alternatives and toward the achievement of that policy the Commonwealth hereby adopts an integrated chemicals strategy to achieve that goal:

- a) Designating an initial group of priority chemicals to be targeted for substitution as safer alternatives are found to be feasible;
- b) Assessing the uses of those priority chemicals through the Toxics Use Reduction Institute at the University of Massachusetts in Lowell to determine whether there are safer feasible alternatives available for those usage categories;
- c) Where there are uses of the chemicals for which there are no safer feasible alternatives, instituting further research and development rather than regulatory action;
- d) Directing the Executive Office of Environmental Affairs to set priorities for investment, business assistance and regulatory agency action based on a substance's potential health

and environmental impacts, on the economic and technical ease of substitution and on the economic benefits of investment in alternatives;

- e) Giving flexibility to businesses to develop and implement their own measures to choose and implement safer alternatives
- f) Directing the department of environmental protection to serve as the implementing regulatory agency for safer feasible alternatives;
- g) Directing the office of technical assistance within the executive office of environmental affairs to coordinate technical assistance to businesses in developing safer alternatives and substituting priority toxics building on existing capacities at the Toxics Use Reduction Institute and office of technical assistance;
- h) Assessing fees on toxic chemicals to raise funds to create a Business Transition Assistance Program, an Innovative Industries Investment Plan, and to cover regulatory costs.

The chemicals strategy envisioned under this act is integrated with and builds upon the programs established under the Massachusetts Toxics Use Reduction Act.

SECTION 3. Chapter 21I of the General Laws is amended by striking section 5.

SECTION 4. Chapter 21I of the General Laws is hereby amended to insert the following new sections:

Section 24. Definitions for Safer Alternatives Program

For purposes of sections 24 through 34 of this act, the following words and phrases shall have the following meanings:

“Acceptability criteria” means the hazard criteria set forth in section 4 for evaluating the acceptability of toxic substance alternatives.

“Alternative” or "alternatives" mean activities, technologies, materials or methods which can be substituted so as to avoid or significantly reduce the potential for harm to human health or the environment posed by an activity involving the use of a priority toxic substance.

"Board" means the Safer Alternatives Oversight Board created by this chapter.

“Department” means the department of environmental protection.

“Distributor” means any person or legal entity which distributes products to retail establishments on a wholesale basis, and also includes any legal entity which owns retail establishments and distributes such products to more than five retail establishments of its own within the Commonwealth. Distribution or sales include, but are not limited to, transactions conducted through sales outlets, catalogs or the internet, a product under its own brand or sales of a product by others under their own brand or label.

"Environment" means natural physical conditions and systems including land, air, water, minerals, flora, fauna, noise, and ecosystems.

"EOEA" means the executive office of environmental affairs.

"Feasible" means capable of being accomplished within a reasonable period of time with proven technologies.

"Function substitution" means eliminating the use of a priority toxic substance by engaging in a different means of meeting the same need - for instance, substituting digital thermometers for mercury thermometers, or using better day to day maintenance to avoid pest problems and thereby eliminate pesticide use.

“Further study alternative” means an alternative for which the institute lacks sufficient data to characterize it either as a “safer alternative” or an “unacceptable alternative.”

"Impact on existing jobs" means need for employee retraining to do a different job in the same workplace, changes in job descriptions or tasks, changes in working conditions such as health and safety or reduction in employee wages or hours occurring in the Commonwealth of Massachusetts.

“Institute” means the toxics use reduction institute at the University of Massachusetts, Lowell.

"Job loss" means the loss of employment within the Commonwealth of Massachusetts.

"Just and fair transition" means reemployment assistance or vocational retraining or other support or arrangements sufficient to ensure that any employee displaced in the Commonwealth as a result of toxic substance substitution will be eligible for an available job with at least equivalent wages and benefits, skill level, and working conditions.

“Legal entity” means any firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, county, city, town, and the state, and any of the agencies and political subdivisions of those entities, joint action agencies, public

authorities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions.

“Manufacturer” means the producer of a product sold in the Commonwealth.

"Material substitution" means the direct replacement of one substance for a priority toxic substance in a simple drop-in process, without otherwise changing the formula or process.

"Priority toxic substances" means the following substances:

- a. Lead
- b. Formaldehyde
- c. Trichloroethylene
- d. Perchloroethylene
- e. Dioxins and Furans
- f. Hexavalent chromium
- g. Organophosphate pesticides
- h. Polybrominated Diphenyl Ethers
- i. di-(2-ethylhexyl)phthalate (DEHP)
- j. 2,4, Dichlorophenoxyacetic acid (2,4, D)

Additional substances shall be designated as priority toxic substances pursuant to section 32 of this chapter.

"Process substitution" means changing one substance to allow for the elimination of the use of a priority toxic substance by changing the process involved, for instance, using dry ice pellet blasting rather than chemical treatment to remove paint.

"Proven technologies" means technologies in use at some users within similar firms in a user sector, within or outside of the Commonwealth.

"Qualitative basis" means identifying and estimating categories of releases and exposures, without undertaking extensive quantitative studies or analysis.

"Safer Alternatives Report" means the Safer Alternatives Assessment Overview Report or any Safer Alternatives Assessment published by the Toxics Use Reduction Institute.

"Safer alternatives" means a group of alternatives, or a specific alternative, which have been identified by the institute as most effective at reducing the overall potential for harm to human health or the environment.

"Science Advisory Board" means the science advisory board created by section 6 of this chapter.

"Toxic or hazardous substance," means any chemical substance in a gaseous, liquid or solid state which is identified on the toxic or hazardous substance list established pursuant to section nine of this chapter, but which will not include any chemical substance when it is (1) present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or present in air used either as compressed air or as part of combustion; (2) present in crude, lube or fuel oils or other petroleum materials being held for direct wholesale or retail sale; (3) present as a naturally occurring substance in fossil fuels, and in emissions or byproducts as a result of the combustion of fossil fuels.

"Unacceptable alternative," means an alternative which, based on the weight of available evidence, may not significantly reduce potential harm to human health or the environment.

"Usage" means the presence of a priority toxic substance in manufacturing, products or services delivered or conducted within the Commonwealth.

"Usage Category" means the general area of use of a substance – for example in dyes, cleaners, or surfactants, and where appropriate, may also include a focus on a particular business sector , such as the use of a substance in cleaners used in hospitals, or on a subgrouping of users or sectors that are technically and logically related, such as the use of cleaners in buildings occupied by children.

"User sector" means a logical grouping of users of a priority toxic substance within the Commonwealth.

Section 25. Safer Alternatives Criteria, Assessments and Overview.

(A) The Toxics Use Reduction Institute at the University of Massachusetts, Lowell shall conduct and publish Safer Alternatives Assessments which evaluate the availability of safer alternatives to the priority toxic substances for categories of uses within the Commonwealth. The Institute shall determine whether, for each category of usage, there are alternatives that are safer, and whether these alternatives are feasible. The Institute shall evaluate the economic opportunities or feasibility of adopting and implementing any alternative chemical, process and/or technology as a substitute, including, but not limited to, consideration of the potential effects on capital, operating and production unit costs, and product price, to result from said substitution. This assessment shall include a qualitative characterization of the economic impacts of substitution on the Massachusetts economy, including any impacts on the workforce or quality of work life, as well as of the extent of human exposure to the priority substances that could be eliminated through substitution. Each assessment shall also identify uses of chemicals which do not currently have a feasible safer alternatives available, and make

recommendations for promoting research and development of such alternatives.

(B) The Institute shall work with the Science Advisory Board to develop criteria for determining what alternatives are acceptable as safer alternatives for priority toxic substances. The criteria shall characterize alternatives by one of three mutually exclusive categories -- as unacceptable alternatives, further study alternatives or safer alternatives. Safer alternatives shall be alternatives which, based on the weight of the evidence at the time of review, the Institute determines would be most effective at reducing the overall potential for harm to human health or the environment.

(C) The Institute shall request comments and suggestions of affected businesses, affected workers, the Safer Alternatives Oversight Board and members of the public in developing the Safer Alternatives Report. The Institute shall convene seminars and public meetings, and solicit comments through the internet and other means to inform the development of the Safer Alternatives Report for each priority toxic substance.

(D) The Institute will publish and make available to the EOEA, the department and the general public the results of the Safer Alternatives Assessment report for each priority toxic substance and compile a list of alternatives deemed as unacceptable, further study, or acceptable for all of the priority toxic substances.

(E) No later than one year following the receipt of funding, the Institute shall publish a Safer Alternatives Assessment Overview Report regarding the ten priority chemicals, to serve as a

basis for the State Priorities Action Plan. This overview will identify the key uses of the prioritized chemicals and provide an overview of the safer alternatives to these uses, including an overview of feasibility and economic impact. Based on the priorities, timeline and funding of the State Priorities Action Plan, the institute will then undertake and publish in–depth safer alternatives assessments.

Section 26. Notices of manufacture or distribution.

(A) Notices. No later than 90 days following the effective date of this section, any person or legal entity that manufactures or distributes a product in the Commonwealth which the manufacturer or distributor knows or has reason to suspect to contain a priority toxic substance shall file a notice with the department identifying the product, the approximate number of units distributed in the Commonwealth, an estimate of the amount or concentration of the priority toxic substance contained in each unit if known, purpose for including the priority toxic substance, the name and address of the manufacturer, and the name, address, and phone number of a contact person. The department shall prescribe a notification form for such notices to be filed, and a means of filing such notices electronically.

(B) Distribution of information. The notices shall be provided by the department to the Toxics Use Reduction Institute for use in preparing its Safer Alternatives report, and shall be a public record under section 10 of chapter 66 of the General Laws. Public disclosure of confidential business information submitted to the department pursuant to this section shall be governed by the requirements of section 10 of chapter 66 of the general laws. Notwithstanding the

requirements of the said act, the state may provide the copies of such information, and the department may compile or publish analyses or summaries of such information provided that the analyses or summaries do not identify any manufacturer or reveal any confidential information.

(C) Preemption. Any product containing a priority toxic substance for which federal law governs notice in a manner that preempts state authority shall be exempt from the requirements of this section.

(D) With the approval of the department, a manufacturer, distributor or trade group may supply the information required above for a product category rather than an individual product. The submitter shall update and revise the information in the notification whenever there is significant change in the information or when requested by the department. The department may promulgate regulations pursuant to chapter 30A of the general laws, for the content and submission of the required notification.

Section 27. State Priorities Action Plan.

(A) No later than 180 days after the Toxics Use Reduction Institute issues the Safer Alternatives Report pursuant to section 25 paragraph (E) of this chapter, the executive office of environmental affairs shall utilize the report to establish a State Priorities Action Plan which sets forth:

1) Priorities for state agency action, with priority given, based on characterizations in the Safer Alternatives Report, of the chemical uses that pose the greatest exposures or hazards to the public and chemical uses that are the easiest to replace with safer alternatives.

2) A set of implementation measures based on the following criteria:

a) If the Safer Alternatives Report indicates that safer alternatives are feasible and of comparable cost, the department shall be required to set and enforce deadlines within one year for certifying substitution of safer alternatives as provided by sections 29 and 30 of this chapter.

b) If the Safer Alternatives Report finds that safer alternatives are feasible, but requiring extensive capital expenditure or training, EOEA shall implement a business assistance program, and the timeline to be established by the department shall include consideration of the costs of substitution and the availability of resources to aid in the businesses transition.

c) If the Safer Alternatives Report determines that safer alternatives are not feasible the plan shall define research and development activities, including a priority of encouraging and supporting research by private entities; and

3) Specific tasks assigned to the department of environmental protection relative to regulation deadlines and enforcement regarding business and institutional use of toxic chemicals in facilities, and regarding regulation of consumer products containing the priority toxic chemicals.

(B) In preparing the State Priorities Action Plan, EOEA shall consider the significance of the potential health and environmental impact, and economic and other impacts on workers, consumers and communities. The goal of the State Priorities Action Plan shall be to act as expeditiously as possible to ensure substitution of safest alternatives, while acting to minimize job loss and mitigate any other potential unintended negative impacts.

(C) After the EOEA has established a State Priorities Action Plan, all other state agencies shall take any required implementing actions as set forth in subsequent sections.

Section 28. Investment Planning and Business and Employee Transitions Programs

(A) The executive office of economic development and the executive office of environmental affairs shall develop an Innovative Industries Investment Plan which shall describe potential priorities for investment in Massachusetts businesses and research and development institutions that could bring the most benefit to the Massachusetts economy through high paying safe jobs and economic growth.

In making the Plan, EOED and EOEA shall obtain input from businesses, researchers in the field of green chemistry and innovative technologies, labor and employee organizations and associations, public and private environmental and economic development organizations, and other relevant parties,

EOEA and EOED shall submit this plan to the Legislature within one year of enactment, for consideration of increased public investment and programs.

(B) Business Transitions Assistance Program.

The Executive Office of Environmental Affairs shall oversee a Business Transitions Assistance Program (BTAP) facilitating business transitions to safer alternatives in the commonwealth. In developing the program, the EOEA shall determine where state financial investment can be most effectively used to protect public health, focusing on application and promotion of safer alternatives in sectors where financial or technical assistance can do the most to ease the transition to safer alternatives. It may also consider the findings of the Innovative Industries Investment Plan for cost effective investments that will create the greatest benefit in jobs and economic growth.

The toxics use reduction institute and office of technical assistance will provide technical assistance to businesses for developing and applying safer alternatives consistent with sections six and seven of this chapter. The BTAP program shall be principally operated through private consortia, public-private partnerships and state universities. The Business Transitions Assistance Program shall include:

1. technology support services to evaluate and promoting viable technologies, encourage university researchers to pursue projects, link researchers with industry

partners, and attract funding and additional support through federal and private grant and financial assistance resources;

2. direct grants and loans to businesses for costs required to implement safer alternatives
3. technical support focused on individual companies or user sectors;
4. technical assistance in assessing safer alternatives and assistance with forming consortiums to assess and develop safer alternatives
5. research and development of safer alternatives, including demonstration projects;
6. market development programs, to create demand for safer alternatives;
7. conferences, seminars, and workshops focused on joint problem solving and evaluation of technology development opportunities for particular user sectors;
8. publications focused on particular user sectors.

The BTAP program shall be developed with assistance and collaboration with the department of labor and industries, department of economic development, the office of technical assistance of the executive office of environmental affairs, department of employment and training, and other agencies in the development and implementation of these mitigation measures.

(C) Employee Transitions. The department of employment and training shall cooperate with the EOEA and the department in developing the State Priorities Action Plan and implementing measures under this chapter. These agencies shall jointly develop a plan to provide that in the event that substantial job losses are anticipated as a result of implementation, a just transitions plan shall ensure reemployment assistance or vocational retraining or other support or

arrangements sufficient to ensure that any employee displaced in the Commonwealth as a result of toxic substance substitution will be eligible for an available job with at least equivalent wages and benefits, and working conditions.

In the event that any employee is terminated after the enactment of this law, through no fault of his own as a result of the transition from priority toxics, and is otherwise eligible for unemployment benefits, he or she shall receive reemployment assistance benefits and health insurance benefits through the department of employment and training. Such benefits shall be in addition to any benefits any employee may receive pursuant to the provisions of an agreement resulting from collective bargaining. The transition plan shall include a mechanism for utilizing funds in the Innovation for Safer Alternatives Fund established by MGL chapter 29 section 2DDD to cover any expenses generated as a result of this section and shall provide a mechanism for annual accounting of any funds disbursed pursuant to this section.

In the event there is projected to be significant job loss in the Commonwealth as a result of the shift to safer alternatives, the department shall establish requirements to ensure a just and fair transition of any affected workers. In the event there would be other substantial impacts on existing jobs, transition plans should also address these issues.

Section 29. Implementation – Business and Institutional Uses of Priority Toxic Substances.

(A) The department shall promulgate regulations to establish substitution deadlines for business or institutional uses of priority toxic substances for which a Safer Alternatives Report identifies safer feasible alternatives. As determined in an EOE priority setting, the department will act first on the chemical uses that result in highest human exposure or environmental contamination. The regulations shall also take account the costs of the transition and the availability of assistance for substitution. The regulations shall specify enforcement mechanisms, including but not limited to implementation of toxics use reduction plans developed under section 11 of this chapter and amended environmental permitting conditions. The department shall establish de minimis thresholds for substitution requirements that shall ensure that any significant business uses of the priority toxic substances are covered by the substitution requirements, even if such businesses or institutions were not previously required to prepare toxics use reduction plans.

(B) No later than 90 days prior to any substitution deadline promulgated by the department, each regulated facility shall:

1) File with the department a certification signed by a certified toxics use reduction planner that a safer alternative as designated by a Safer Alternatives Report has been implemented, including identification of the name of the alternative, and documentation of employee participation consistent with this section; or

2) File an application with the department to use an alternative substance that has neither been designated by the institute as a safer alternative, nor designated unacceptable, documenting

with toxicity and exposure data how the substance would comply with the safer alternatives criteria developed by the Toxics Use Reduction Institute. In response to such request the department shall evaluate whether such alternative is acceptable, or shall list such product on a “safety review pending” list; or

3) File with the department an application for a waiver of the substitution deadline, certifying that there is no safer alternative that is technically or economically feasible for their particular use of the substance. Such waiver application shall include documentation of the applicant’s safer alternative planning process, the basis for finding that there is no feasible safer alternative, and documentation of efforts to be taken to minimize the use of the priority toxic substance and human and environmental exposures to such substance until safer alternatives are found and implemented. The submittal shall include a toxics use reduction plan for the target substance, consistent with section 11 of this section, which evaluates the feasibility of substitutions or other measures to eliminate the use of the specified target substances with review of the technical and economic options for eliminating the use of the chemicals targeted by the deadline, and review of the applicability of safer alternatives designated by a Safer Alternatives Report. The department shall reject or accept such waiver application within 60 days of receipt of an application, and may grant the waiver where the department finds there is a need for the use of the substance., there was no safer alternative, or the use of the product would not cause human exposure or environmental contamination. In the event that a waiver is granted, the applicant shall be required to engage in substitution planning every two years, and to reapply for a waiver after each planning cycle, until the applicant has achieved full implementation of safer alternatives.

(C) All firms evaluating the substitution of safer alternatives pursuant to a safer alternatives substitution deadline shall undertake measures to involve employees. At a minimum, each firm shall provide employees a thirty-day period to provide comments. The firm shall maintain documentation of its employee input and how it is utilized, shall solicit employee comments regarding the use of alternatives, allow for anonymous employee comments, and ensure an analysis of the impact the substitution may have on all aspects of the quality of work life.

(D) The department and the institute shall cooperate in revising training requirements for toxics use reduction planners to ensure that the planners are prepared to assist in fulfilling the substitution planning requirements of this section. In addition, the department and institute may develop an additional curriculum to enable toxics use reduction planners to aid manufacturers and distributors in fulfilling the requirements of section 30 of this act.

Section 30. Implementation – Manufacture and Distribution of Consumer Products Containing Priority Toxic Substances.

(A) The department shall promulgate regulations to establish deadlines for manufacturers and distributors of products containing priority toxic substances found in a Safer Alternatives Report to have safer feasible alternatives to implement the alternatives or otherwise remove the products from the market in the Commonwealth.

(B) No later than the date of any substitution deadline promulgated by the department, each manufacturer or distributor of a product sold or distributed in the commonwealth which they know or should know contains such substances shall:

1) File with the department a certification that a safer alternative as designated by a Safer Alternatives Report has been implemented, including identification of the name of the alternative; or

2) File an application with the department to use an alternative substance that has not been approved by the Institute as a safer alternative, documenting with toxicity and exposure data how the substance would comply with the safer alternatives criteria developed by the Toxics Use Reduction Institute. In response to such request the department shall evaluate whether such alternative is acceptable, or shall list such product on a “safety review pending” list; or

3) File with the department an application for a waiver of the substitution deadline, certifying that there is no safer alternative that is technically or economically feasible for the user's products. Such waiver application shall include documentation of the basis for finding that there is no feasible alternative, and documentation of efforts to be taken to minimize the use of the priority toxic substance and human and environmental exposures to such substance until safer alternatives are found and implemented. The department shall reject or accept such waiver application within 60 days of receipt of an application, and may grant the waiver where the department finds there is a need for the product, there was no safer alternative, or the use of the product would not cause human exposure or environmental contamination. In the event

that a waiver is granted, the applicant shall be required to reapply for a waiver after each planning cycle, until the applicant has achieved full implementation of safer alternatives.

(C) The department shall publish a set of lists, for use by retailers and members of the public, of (1) all products that have been certified by manufacturers or distributors as containing only TURI-designated safer alternatives, (2) all products that are being sold under a valid waiver and (3) noncomplying products that are prohibited for sale in the Commonwealth.

(D) The requirements of this section shall apply to manufacturer and distributors that sell or distribute products to persons or legal entities in the commonwealth, regardless of whether such manufacturers or distributors are physically located in the commonwealth.

Section 31. General requirements and authorities.

(A) Businesses of any size may develop collaborative submissions to meet any of the certification or waiver application requirements of sections 29 and 30 of this chapter. The executive office of environmental affairs shall assist in facilitating the formation and collaboration of groups of businesses in fulfilling the filing and documentation requirements.

(B) Certifications pursuant to section 30 shall be by independent laboratories known to and approved by the department.

(C) The department shall have all of the powers and authorities necessary to prohibit or limit the use, sale or distribution of a product containing a priority toxic substance in the Commonwealth.

(D) A manufacturer or distributor shall have a duty to take back from retailers and consumers, and compensate them for the full price paid, for any products sold after the enactment of this act for which a regulation of the department requires substitution and for which no waiver has been obtained for continued distribution of the product.

Section 32. Safer Alternatives Oversight Board.

(A) Membership. The Safer Alternatives Oversight Board shall consist of sixteen members appointed no later than ninety days following the effective date of this section by the Secretary of the Executive Office of Environmental Affairs, one of whom shall be nominated by each of the following to represent the nominating organizations: the Massachusetts Public Health Association; the Massachusetts AFL-CIO; the Massachusetts Building Trades Council; Building Trades Employers Association; the Massachusetts Coalition on Occupational Safety and Health and the Western Massachusetts Coalition on Occupational Safety and Health, jointly; Clean Water Action; Associated Industries of Massachusetts; Massachusetts Nurses Association; Greater Boston Physicians for Social Responsibility; the Environmental League of Massachusetts; Massachusetts Breast Cancer Coalition; Massachusetts Public Interest

Research Group; IUE/CWA Local 201; Small Business Association; the Responsible Business Association; and one of whom shall be appointed as an at large representative by the Secretary.

Any member shall be eligible for reappointment. In making initial appointments to said committee, the Secretary shall appoint two members for terms of one year, three members for terms of two years, three members for terms of three years, and six members for a term of four years. Upon the expiration of the term of any such member, his successor shall be appointed for a term of four years. Persons appointed to fill vacancies shall serve for the unexpired term of said vacancy.

(B) The chairman of the Board shall be elected by the members. A member of the Board may be removed by the Secretary, solely for neglect of duty or malfeasance in office. The Office of the Secretary shall be responsible for the administrative operations of the Board.

(C) Duties of the Board. The oversight board will participate, from conceptualization and scoping through drafts and finalization, in the development of the Safer Alternatives Reports of the Toxics Use Reduction Institute, the State Priorities Action Plan of the EOEPA and development of implementing policies and regulations by the department .

(D) The Oversight Board shall itself solicit public comments, and after consideration of those comments, submit recommendations.

Members of the Oversight Board may also comment individually to the agencies providing guidance on issues affecting constituencies, such as just transitions.

(E) The oversight board shall solicit comments from the public in the course of its review and recommendations, including, but not limited to:

- 1) Compliance of the implementation plan with the requirements of this section;
- 2) Evaluation of any potential changes and demands that may be imposed on the workforce in the course of implementation, including job loss, increases in workload and work pace, de-skilling, new skill demands, and health and safety impacts such as repetitive strain injuries and illnesses and injuries caused by physical or psychological stress, and the measures that can be taken to avoid detrimental impacts or to ensure a just and fair transition; and
- 3) Evaluation of impacts on consumers, including changes in products or activities.

(F) Technical Assistance Grants. For purposes of ensuring public involvement the department shall establish technical assistance grants to organizations of consumers and/or workers focused on the impact of changes in specific sectors. Such grants shall assist in meeting the following needs:

- 1) securing full information on technologies and their impacts on workers, consumers and the environment;

2) hiring independent technical support regarding of technologies, processes, and work organization; and 3) paying for training programs to assist affected groups in analyzing the changes.

Section 33. Addition of substances.

Following the third year after enactment of this section, the department shall at its own initiative, or at the recommendation of the Science Advisory Board or the Toxics Use Reduction Institute, add substances to the list which meet the following three criteria:

- 1) There is credible evidence that they pose potential for significant harm to human health or the environment in Massachusetts;
- 2) The substances are widely utilized within Massachusetts; and
- 3) Safer alternatives are available for at least some of the situations in which they are used.

In addition, any group of ten residents of the Commonwealth may petition the department to add new substances to the priority target list. Substances shall be added to the list by the department, based on the advice of the Oversight Board, provided that they are found to merit high priority based on the three criteria described in this section. Such a petition shall include the name and address of each petitioner, and a statement of the basis for believing that the named substance should be added to the priority toxic substance list, and such other information or documentation as the petitioner chooses to include.

Section 34. Enforcement and Appeals

(A) Penalties for Noncompliance. Except as otherwise provided in paragraph B of this section, violations of sections 24 to 35 of this chapter by any person or legal entity, shall subject the violator to penalties of up to \$25,000 per day of violation. In addition, the department shall have the authority to exclude products from the state when a distributor or manufacturer has failed to comply with the provisions of this Act.

(B) Exemption for end users of consumer products. End users of consumer products shall not be subject to enforcement action under paragraph (a) of this section.

(C) Petition for Appeal. No later than 60 days following the publication of a final plan by the department, any ten residents of the Commonwealth may file a petition of appeal of an action plan with the Commissioner of the department. Such a petition may be filed if the petitioners assert that the plan mischaracterizes uses of the priority toxic substance; fails to include feasible alternatives, or mischaracterizes alternatives; fails to result in substitution of the safest available alternatives as expeditiously as possible; fails to adequately address job loss or impacts on existing jobs; or otherwise fails to meet the criteria of this act. A petition of appeal shall state the grounds of objection. The department shall have 60 days from the date of filing to reply with its determination to (a) deny the appeal, or (b) grant the appeal and revise the plan.

(D) Citizen enforcement.

1) The superior court shall have jurisdiction to enforce the requirements of this chapter in an action brought by any ten residents of the commonwealth against:

(i) any manufacturer, user or distributor alleged to have been be in violation of such requirements; or

(ii) an official of the commonwealth when there is alleged a failure of that official to perform any act or duty under this chapter which is not discretionary with that official.

2) No action may be commenced under this section against any manufacturer, user or distributor alleged to have been in violation of the requirements of this chapter prior to twenty one days after the date on which the plaintiff gives notice of the alleged violation to the department and the alleged violator. No action may be commenced under this subsection against any manufacturer, user or distributor alleged to have been in violation of such requirements if the department has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned and to impose a civil penalty under this chapter with respect to the violation of such requirement. No action may be commenced under this subsection against an official of the commonwealth prior to twenty-one days after the date on which the plaintiff gives notice to said official and the commissioner that the plaintiff will commence the action. Notice under this subsection shall be given in a manner as the department shall prescribe by regulation.

3) The court, in issuing any final order for civil penalties or injunctive relief in any action brought pursuant to this subsection, may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party other than the commonwealth who advances the purposes of this chapter.

Nothing in this section shall restrict or expand any right which anyone may have under any other federal or state statute or common law to seek enforcement of any requirement or to seek any other relief.

Section 35. Scope of Law and Relationship to Existing Law.

(A) Relationship to Federal Law. Nothing in this Act shall be construed to require actions which are preempted by federal law. No provision of this Act shall be construed to require the adoption of Occupational Safety and Health standards or the issuance of orders on any Occupational Safety and Health matter on which the federal Occupational Safety and Health Administration has established a standard.

(B) Relationship to Existing laws. Existing environmental, land use, public health and conservation laws and regulations of the Commonwealth shall be interpreted and enforced consistent with this Act. Nothing in this Act shall be interpreted so as to contravene federal law, or the Constitutions of the Commonwealth or of the United States. Nothing in this act shall be construed to convey rights to discharge priority toxic substances into the environment, to cause potential harm to individuals or the environment, or to create a nuisance. Nothing in this Act shall be construed to limit the ability of local government to restrict or prohibit the use or discharge of toxic substances.

(C) Severability. The provisions of this Act shall be severable. In the event that any provision of this Act is invalidated by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

SECTION 5. Fee on toxic substances.

The department of environmental protection shall revise its existing fee structure under the Toxics Use Reduction Act to encompass, in addition to current filers, the wholesale sellers or distributors of products or services to retail establishments in the Commonwealth where such products or services utilize or contain priority toxic substances, regardless of whether such wholesale sellers or distributors are located within or outside of the Commonwealth. Where retail establishments buy products directly from manufacturers, the fee shall be assessed on the manufacturer. The fee shall be set at a level sufficient to raise \$9.5 million per year. 75% of the fee shall be collected from larger distributors and 25% from smaller distributors, based on criteria the department shall establish. In addition the department shall establish a de minimis threshold for products, services and toxic substances below which no fee shall be assessed.

SECTION 6. Chapter 29 of the General Laws is amended by adding the following section:

Section 2DDD. There shall be established and set up upon the books of the commonwealth, a separate fund to be known as the Innovation for Safer Alternatives Fund. There shall be credited to such fund any amounts collected by the department as fees or penalties pursuant to chapter 21I; any appropriation, grant, gift, or other contribution explicitly made to such fund; and any interest earned on monies within the fund. Amounts credited to such fund shall be used, subject to appropriation, solely for the purposes of carrying out chapter 21I including the Act for a Healthy Massachusetts: Safe Alternatives to Toxic Chemicals. Such funds shall be divided with at least three million dollars per year for the executive office of environmental affairs and its office of toxics use reduction assistance and technology, three million dollars per year for the Toxics Use Reduction Institute, one million dollars per year for the department of environmental protection, and two and a half million dollars for the business transitions assistance program established by MGL chapter 21I section 28. The EOEA shall annually file a report with the house and senate committees on ways and means detailing the manner of expenditure of appropriations from the fund in the preceding fiscal year.