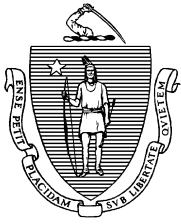


Senate, No. 2481, printed as amended

The Commonwealth of Massachusetts



IN THE YEAR OF TWO THOUSAND AND SEVEN

AN ACT PROVIDING FOR SAFER ALTERNATIVES TO TOXIC CHEMICALS

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to establish safer alternatives to toxic chemicals, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and safety

*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. To provide for certain unanticipated obligations of the commonwealth, to
2 provide for an alteration of purpose for current appropriations and to meet certain requirements
3 of law, the sum set forth in this section is hereby appropriated from the General Fund unless
4 specifically designated otherwise in this act for the several purposes and subject to the
5 conditions specified in this act and subject to the laws regulating the disbursement of public
6 funds for the fiscal year ending June 30, 2008. Such sum shall be in addition to any amounts
7 previously appropriated and made available for the purposes of said item.

8 SECTION 2.

9 2020-0200 The secretary of energy and environmental affairs shall expend for the
10 purposes of carrying out this act, an amount not to exceed \$11,500,000 from fees collected
11 pursuant to this act; provided, that the first 30.5 per cent of the revenue collected, but not more
12 than \$3,500,000 per year, shall be expended for the Toxics Use Reduction Institute at the
13 University of Massachusetts at Lowell, a portion of which shall be expended for the University
14 of Massachusetts at Worcester and for the University of Massachusetts at Amherst, apportioned

15 commensurate to each university’s involvement in assessment reports and toxics research;
16 provided further, that the next 13 per cent of the revenue collected, but not more than
17 \$1,500,000 per year, shall be expended for retraining employees who lose their jobs due to the
18 implementation of this act through the rapid response set aside program; provided further, that
19 the next 13 per cent of the revenue collected, but not more than \$1,500,000 per year, shall be
20 expended for business transitions assistance programs and innovative business leaders programs
21 established under this act; provided further, that the final 43.5 per cent of revenue collected, but
22 not more than \$5,000,000 per year, may be expended by the secretary to carry out this act; and
23 provided further, that the department of environmental protection shall annually file a report
24 with the house and senate committees on ways and means detailing the expenditures under this
25 item in the preceding fiscal year.....\$11,500,000.

26 SECTION 3. Section 2 of chapter 21I of the General Laws, as appearing in the 2006
27 Official Edition, is hereby amended by inserting after the definition of “Agency” the following
28 definition:-

29 “Alternative”, an activity, technology, material or method of equivalent function which
30 can be substituted for the use of a particular chemical.

31
32 SECTION 4. Said section 2 of said chapter 21I, as so appearing, is hereby further
33 amended by inserting after the definition of “Manufacture” the following definition:-

34 “Material substitution”, the direct replacement of 1 substance for a higher hazard
35 substance in a simple drop-in process, without otherwise changing the formula or process.

36
37 SECTION 5. Said section 2 of said chapter 21I, as so appearing, is hereby further
38 amended by inserting after the definition of ““POTW (publicly-owned treatment works)
39 operators” the following 2 definitions:-

40 “Priority toxic substance”, a higher hazard substance designated by the council for the
41 development of a chemical action plan, based on its potential to harm human health or the
42 environment and the availability of: (a) safer alternatives that can be feasibly substituted for

43 specific uses of such substances; or (b) other actions that can reduce human exposure to the
44 substance.

45 “Priority toxic substance use”, a use of a priority toxic substance designated as such by
46 the council pursuant to section 25.

47

48 SECTION 6. Said section 2 of said chapter 21I, as so appearing, is hereby further
49 amended by inserting after the definition of “Resource conservation” the following 2
50 definitions:-

51 “Safer alternative”, an option, including a change in toxic substance, material, product,
52 process, function, system or other action, to replace a toxic substance currently in use and which
53 would be effective in reducing the overall potential for harm to human health or the
54 environment.

55 “Safer alternatives assessment report”, the alternatives assessment completed for each
56 higher hazard substance by the Institute.

57

58 SECTION 7. Said section 2 of said chapter 21I, as so appearing, is hereby further
59 amended by inserting after the definition of “State agency” the following definition:-

60 “Substitution”, the replacement or reduction of a hazardous substances by selecting a
61 less hazardous or nonhazardous substance or by changing a production process, product
62 function or design.

63

64 SECTION 8. Said section 2 of said chapter 21I, as so appearing, is hereby further
65 amended by striking out the definition of “Toxic or hazardous substance” and inserting in place
66 thereof the following definition:-

67 Toxic or hazardous substance”, a substance in any form which is identified on the toxic
68 or hazardous substance list established pursuant to section 9; provided, however, that a toxic or
69 hazardous substance shall not be subject to sections 1 to 23, inclusive, when it is: (1) present in
70 an article; (2) used as a structural component of a facility; (3) present in a product used for
71 routine janitorial or facility grounds maintenance; (4) present in food, drugs, cosmetics or other
72 personal items used by employees or other persons at a facility; (5) present in a product used for
73 the purpose of maintaining motor vehicles operated by a facility; (6) present in process water or

74 noncontact cooling water as drawn from the environment or from municipal sources, or present
75 in air used either as compressed air or as part of combustion; (7) present in a pesticide or
76 herbicide when used in agricultural applications; (8) present in crude, lubricating or fuel oils or
77 other petroleum materials being held for direct wholesale or retail sale; or (9) present in fuels
78 used in combustion to produce electricity, steam or heat, except when production of electricity,
79 steam or heat is the primary business of a facility; and provided further, that a toxic or
80 hazardous substance shall not be subject to sections 24 to 27, inclusive, when it is: (1) present in
81 fuel oils or petroleum materials being held for direct wholesale or retail sale; (2) present in fuels
82 used in combustion to produce electricity, steam or heat; or (3) present as a naturally-occurring
83 substance in fuels and in emissions or byproducts as a result of the combustion of fuels.
84

85 SECTION 9. Section 3 of said chapter 21I, as so appearing, is hereby amended by
86 inserting after the word “reduction”, in line 61, the following words:- , substitution of safer
87 alternatives.
88

89 SECTION 10. Said section 3 of said chapter 21I, as so appearing, is hereby further
90 amended by striking out paragraph (J) and inserting in place thereof the following paragraph:-

91 (J) The department may establish technical assistance grants to organizations of
92 consumers or workers focused on the impact of substitutions of safer alternatives in specific
93 sections. The grants may include assistance in securing information on technologies and their
94 impact on workers, consumers and the environment; hiring independent technical support
95 regarding technologies, processes and work organization; and paying for training programs to
96 assist affected groups in analyzing the changes.
97

98 SECTION 11. Section 4 said chapter 21I, as so appearing, is hereby amended by adding
99 the following paragraph:-

100 (H) The council shall submit a report to the clerks of the senate and house of
101 representatives and the house and senate chairs of the joint committee on environment, natural
102 resources and agriculture, outlining recommendations for improvements to the safer alternatives
103 provisions of this chapter including, but not limited to, further provisions for products
104 manufactured outside the commonwealth and products sold on the internet.

105

106 SECTION 12. Said chapter 21I is hereby further amended by inserting after section 6
107 the following section:-

108 Section 6A. (a) In addition to any other requirements of this chapter, the institute shall
109 seek to reduce the presence of toxic or hazard substances in products manufactured for use and
110 sale in the commonwealth by promoting safer alternatives to such substances. The institute may
111 develop recognition programs to promote the priority toxic substance reduction achievements of
112 industry and communities. The institute may establish fees for its safer alternatives programs.
113 When feasible, the institute shall coordinate the programs and responsibilities relative to the
114 substitution of safer alternatives for priority toxic substances with those programs and
115 responsibilities described in this chapter.

116 (b) Through such programs, the institute shall:

117 (1) provide general information about toxic or hazardous substances and actively
118 publicize the advantages of and developments in safer alternatives and the requirements of this
119 chapter, which shall include, but not be limited to, providing information about public health,
120 environmental and economic issues associated with toxics use and toxics use reduction;

121 (2) establish courses, seminars, conferences and other events and provide reports,
122 updates, guides and other publications and other means of providing technical information for
123 consumers and, as appropriate, work in coordination with the office;

124 (3) develop and provide curriculum and training for higher education students and
125 faculty on priority toxic substances and potential safer alternatives;

126 (4) sponsor or engage in research to identify potential priority toxic substances and
127 potential safer alternatives to such substances;

128 (5) sponsor research or pilot projects to develop and demonstrate innovative
129 technologies for implementing safer alternatives to priority toxic substances;

130 (6) subject to appropriation, develop in consultation with the department and office, a
131 safer alternatives curriculum and training program to supplement the toxics use reduction
132 planner training program; and

133 (7) subject to appropriation, provide safer alternatives implementation training and
134 assistance to citizens, community groups, nonprofit organizations and institutions, workers,
135 labor representatives, businesses, product supply chains and state and local government boards

136 and officials; provided, however, that such training and assistance shall provide such individuals
137 and groups with an understanding of the public health and environmental impacts of the
138 presence of toxic or hazardous substances, the methods and strategies for substituting safer
139 alternatives for priority toxic substances and the requirements of this chapter.

140

141 SECTION 13. Section 7 of said chapter 21I, as appearing in the 2006 Official Edition,
142 is hereby amended by adding the following 2 paragraphs:-

143 (K) The office shall work with the institute, in consultation with the implementing
144 agencies to establish an innovative business leaders program to encourage early substitution of
145 high hazard and priority toxic substances. The program shall assist users of high hazard and
146 priority toxic substances to complete substitution plans. The program may include priority
147 targeted financial and technical assistance and support for research, information gathering and
148 implementation.

149 (L) The office shall provide business transition assistance for developing and
150 implementing safer alternatives consistent with this chapter which may include, but shall not be
151 limited to, direct grants and loans to businesses for costs required to implement safer
152 alternatives.

153

154 SECTION 14. Said chapter 21I is hereby amended by adding the following 5 sections:-

155 Section 24. (a) Annually, the council shall select, on the basis of available funds,
156 available institute resources, and the anticipated public policy implications of report publication,
157 1 to 5 higher hazard substances, which may include any substance recommended by the
158 department of public health, and direct the institute to prepare and publish a safer alternatives
159 assessment report that evaluates the availability of safer alternatives for each selected substance.
160 The council, in consultation with the institute, shall establish a schedule for the development of
161 each safer alternatives assessment report.

162 (b) For each safer alternatives assessment report, the institute shall:

163 (1) identify the uses and functions of the higher hazard substance and select a subset of
164 uses and functions for further study based on uses in products and facilities and other relevant
165 factors; provided, however, that priority shall be given to uses of greatest volume or dispersion
166 into indoor and outdoor environments, high exposure scenarios and other sources of concern;

167 (2) identify whether alternatives are available for the selected uses and functions of the
168 higher hazard substance;

169 (3) identify whether any of the existing uses of the substance are of a clearly
170 unnecessary nature;

171 (4) research and study relevant factors to characterize feasible alternatives;

172 (5) provide a qualitative discussion of the economic feasibility, opportunities or costs
173 associated with adopting and implementing any safer alternatives; provided, however, that such
174 discussion may include a qualitative characterization of the economic impacts of substitution
175 and the extent of human exposure to the higher hazard substance that could be eliminated
176 through substitution or other actions;

177 (6) identify uses of substances that do not currently have a feasible safer alternative
178 available and make recommendations for promoting research and development of such
179 alternatives; and

180 (7) be authorized to use published chemical categorizations, including government lists
181 of substances used in industry or in consumer products, in order to identify potential safer
182 alternatives.

183 (c) The institute shall seek comments from the science advisory board, the advisory
184 committee and members of the public, including all regions of the commonwealth, in
185 developing each safer alternatives assessment report.

186 (d) The institute shall publish the results of the safer alternatives assessment report for
187 each substance assessed.

188 (e) Following publication of a safer alternatives assessment report for a selected higher
189 hazard substance, the institute shall review its provisions with the advisory committee and the
190 council on a periodic basis, but not less than once every 5 years, and shall revise such report as
191 necessary to update it and to address new recommendations. Revised reports shall be made
192 available to the public for comment, and final revised reports shall be published.

193 (f) In the event that a substance to be assessed is a pesticide, the institute shall contract
194 with resources at the University of Massachusetts at Amherst, including the Cooperative
195 Extension Service, for assistance and guidance in assessing agricultural uses of such substance.

196 (g) In the event that a substance to be assessed is used for medical purposes, the
197 institute shall contract with resources at the University of Massachusetts at Worcester for
198 assistance and guidance in assessing medical uses of such substance.

199 Section 25. (a) Based upon each completed safer alternatives assessment report, the
200 council shall designate assessed substances as priority toxic substances and identify priority
201 toxic substance uses of highest concern if the safer alternatives assessment report concludes that
202 an assessed substance poses a significant risk of harm to human health or the environment and
203 that safer alternatives can be feasibly substituted for specific uses of such substance.

204 (b) Not later than 1 year after the council identifies a priority toxic substance, the
205 department, in consultation with the institute and the advisory committee, shall develop a
206 chemical action plan for that substance, focusing on priority uses, including uses in products.
207 The goal of the chemical action plan shall be to coordinate state agency activities and to require
208 users of priority toxic substances to act as expeditiously as possible to ensure substitution of the
209 priority toxic substances with a safer alternatives, while acting to minimize job loss and mitigate
210 any other potential unintended negative impacts. The chemical action plan shall identify
211 specific actions that users of priority toxic substances shall be required to implement, on a
212 schedule to be established in the plan, to: (i) substitute a safer alternative for the priority toxic
213 substance in specific uses when feasible; and (ii) reduce human exposure to and environmental
214 contamination from such substance.

215 Substitution of a safer alternative shall be required whenever the department determines
216 that there are appropriate safer alternatives that are feasible for specific uses of a priority toxic
217 substance. Efforts to reduce human exposure and environmental contamination shall be required
218 only where the department determines that appropriate safer alternatives are not available.

219 (c) In preparing the chemical action plan, the department shall consider the potential
220 impacts to human health and the environment of the continued use of the priority toxic
221 substance. The chemical action plan shall include:

222 (1) schedules and timelines for achieving substitution of the priority toxic substance with
223 safer alternatives, for specified uses;

224 (2) identification of other state agency actions that should be implemented to reduce
225 human exposure to the priority toxic substance in a particular use and to reduce the potential for

226 environmental contamination from such substance; provided, however, that such actions may
227 include, but shall not be limited to:

228 (i) technical assistance to product manufacturers and users;

229 (ii) substitution plans;

230 (iii) research and development into safer alternatives to the use of a priority toxic
231 substance;

232 (iv) product labeling and other notification to users that a product contains a priority
233 toxic substance and advice on the proper handling and disposal to minimize human exposure to
234 the priority toxic substance;

235 (v) registering the use of a priority toxic substance with the department;

236 (vi) limitations on certain continued uses of the priority toxic substance to specific
237 applications; and

238 (vii) incorporation of reduction measures in toxic use reduction plans submitted to the
239 department pursuant to section 11; and

240 (3) identification of department and other state agency regulations that shall be required
241 to ensure substitution of the priority toxic substance in products and used by toxics users, and to
242 implement other agency actions identified in the chemical action plan.

243 (d) After the department has developed a chemical action plan, it shall be presented to
244 the council for adoption; provided, however, that the council shall seek public comment on each
245 plan and, within 6 months, adopt a plan. Upon adoption of a chemical action plan by the
246 council, all state agencies shall take any required implementing actions as set forth in the
247 chemical action plan and this chapter.

248 Section 26. (a) Based on a chemical action plan as adopted by the council, the
249 department may promulgate regulations to restrict the use of priority toxic substances for
250 specified uses and within consumer products. Such regulations may establish substitution
251 deadlines and substitution planning requirements for specific uses of each priority toxic
252 substance and may specify acceptable alternatives.

253 (b) The regulations may:

254 (1) require toxics users and other persons to file with the department a certification of
255 compliance with any substitution or other requirement promulgated by the department;

256 (2) authorize the filing with the department of an application to use an alternative
257 substance that has not been identified as an acceptable alternative, documenting with toxicity
258 and exposure data how the proposed alternative substance would ensure protection of health and
259 the environment and, in response to such request, the department shall determine whether such
260 alternative is acceptable;

261 (3) authorize the filing with the department of an application for a waiver of a
262 substitution deadline, certifying that there is no safer alternative that is technically or
263 economically feasible for a particular use of the substance; provided, however, that such waiver
264 application shall include:

265 (i) identification of the specific use of the priority toxic substance for which a waiver is
266 sought;

267 (ii) identification of all alternatives considered and their cost and feasibility
268 considerations;

269 (iii) the basis for finding that there is no feasible safer alternative;

270 (iv) documentation of any efforts to be taken to minimize the use of the priority toxic
271 substance and of human and environmental exposures to such substance until safer alternatives
272 are found and implemented; and

273 (v) the steps the applicant shall take to identify safer alternatives in the following 3
274 years;

275 (c) In deciding whether to accept a waiver application, the department shall, in
276 consultation with the department of public health and the department of economic development,
277 consider whether: (i) there is a need for the use of the substance; (ii) there is no safer alternative
278 feasibly available, and (iii) the use of the product would cause human exposure to the priority
279 toxic substance or environmental contamination from handling the substance in manufacturing
280 or the use or disposal of a product containing such substance. Waivers shall not be granted for
281 more than 3 years.

282 (d) This section shall apply to a person who manufactures, sells, offers for sale or
283 distributes products containing a priority toxic substance in the commonwealth.

284 (e) Within the time of a substitution deadline established by the department, the
285 department shall require any regulated entity to certify that substitution of the substance has
286 been completed.

287 Section 27. Certain functions provided for in this chapter may be transferred to or
288 carried out in cooperation with an interstate entity. The interstate entity may, among other
289 functions: compile and categorize chemical lists, produce alternatives assessment reports;
290 develop model chemical action plans and house product or chemical use registries. The
291 department may promulgate regulations to carry out this section.

292 Section 28. (a) Except as otherwise provided in subsection (b), violations of sections 24
293 to 26, inclusive, may be punished by a fine of not more than \$25,000 per day for each day a
294 violation exists. In addition, the department may prohibit the sale or distribution of products
295 when a distributor or manufacturer has failed to comply with this chapter.

296 (b) End users of consumer products shall not be subject to enforcement action under
297 subsection (a).

298

299 SECTION 15. Notwithstanding any general or special law to the contrary, an employer
300 who terminates an employee as a result of the implementation of this act shall notify the
301 department of workforce development at the time of such termination. The local workforce
302 investment board shall work with the rapid response team set aside program within the
303 department of workforce development to determine an individual's eligibility for retraining
304 benefits under the set aside program. The rapid response team shall establish criteria to
305 determine eligibility. An individual deemed eligible under this section may receive up to 1
306 year of training-based assistance.

307

308 SECTION 16. The department shall, in consultation with the executive office of
309 administration and finance, revise its existing fee structure under Chapter 21I of the General
310 Laws to encompass, in addition to current filers, the wholesale sellers or distributors of products
311 or services to retail establishments where such products or services have been determined to be
312 priority toxic substance uses whether or not such wholesale sellers or distributors are located
313 within or without the commonwealth.

314

315 SECTION 17. The report required to be submitted by the administrative council on
316 toxics use reduction to the clerks of the senate and house of representatives and the house and
317 senate chairs of the joint committee on environment, natural resources and agriculture pursuant

318 to Paragraph (H) of section 4 of chapter 21I of the General Laws shall be filed not later than
319 January 1, 2011.

320

321 SECTION 18. The safer alternatives curriculum and training program required to be
322 established pursuant to clause (6) of subsection (b) of section 6A of chapter 21I of the General
323 Laws shall be established not later than July 1, 2009.

324

325 SECTION 19. Nothing in this act shall require actions which are preempted by federal
326 law. Nothing in this act shall require the adoption of occupational safety and health standards or
327 the issuance of orders on an occupational safety and health matter on which the federal
328 Occupational Safety and Health Administration has established a standard. Nothing in this
329 chapter shall convey rights to discharge priority toxic substances into the environment, to cause
330 potential harm to individuals or the environment or to create a nuisance. Nothing in this chapter
331 shall limit the authority of local governments to restrict or prohibit the use or discharge of toxic
332 substances. Any product containing a priority toxic substance for which federal law governs
333 notice in a manner that affects state authority to act with respect to that product shall be exempt
334 from the requirements of this act to the extent required to satisfy the limits imposed by the
335 federal law with respect to state action regarding the product.