

SENATE No. 744

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem, (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 adoption of the accompanying bill:

An Act regulating the maintenance of encroaching vegetation.

PETITION OF:

NAME:

Howard Smolar

DISTRICT/ADDRESS:

31 Donna Rd. Newton, MA

SENATE No. 744

By Ms. Creem (by request), a petition (accompanied by bill, Senate, No. 744) of Cynthia S. Creem for legislation to regulate the maintenance of encroaching vegetation. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act regulating the maintenance of encroaching vegetation.

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 266 of the General Laws is hereby amended by
2 inserting after section 120B the following section:-

3 Section 120B1/2.

4 (a) As used in this section, “vegetation” shall include shrubs and other plant
5 life, but shall not include trees.

6 (b) An individual property owner may remove any encroaching branches, roots
7 or other vegetation up to that individual’s property line.

8 (c) Where encroaching vegetation causes actual harm or poses an imminent
9 danger of actual harm to adjoining property, the owner of the property wherein the vegetation
10 originates shall be required to remove the endangering vegetation from the abutting property up
11 to the property line. The owner of the property wherein the vegetation originates shall be
12 allowed access onto abutting properties for the purpose of determining whether such

13 encroachment reaches the level of actual harm or imminent danger which would require such
14 action. If access to a property for such inspection is denied, the owner of the property on which
15 the vegetation originates may be held harmless for any actual harm ensuing on the encroached
16 upon property due to vegetation.

17 (d) Where encroaching vegetation does not cause actual harm or pose an
18 imminent danger of actual harm, the property owner on whose property the vegetation is
19 encroaching may request that the owner of the vegetation remove the encroaching vegetation.

20 (1) In order to require the owner of vegetation to contain certain
21 vegetation within the abutting owner's property which has been requested to be controlled,
22 where the vegetation does not cause harm or pose a threat of harm to the adjoining property, the
23 owner of the adjoining property must provide the owner of the property on which the vegetation
24 arose with a written request to maintain encroaching vegetation.

25 (2) The owner of the vegetation shall not be in violation of this
26 section so long as the owner complies with the written request for maintenance within reasonable
27 time.

28 (3) If the owner of property on which vegetation is encroaching
29 make a written request, that owner shall have a reasonable expectation that the owner of the
30 vegetation shall continue to remove or control vegetation originating on the abutting property, so
31 long as both owners continue to own those abutting properties.

32 (e) Whoever, being the owner of land abutting that of another, is the owner of
33 vegetation which has encroached on or over the land of such other person as to require an entry
34 on said abutting land for the purpose of performing reasonable and necessary maintenance of the

35 vegetation in order to comply with the reasonable written request by the owner of the encroached
36 property or his agent, shall not be deemed guilty of trespass or liable civilly for damages,
37 provided that such entry is made expeditiously and in the exercise of due care, and that no
38 damage is caused by such entry to the land of said abutting owner. Before such entry said owner
39 shall be in receipt of a written request to enter on adjoining land from the owner for the purpose
40 of maintaining or removing vegetation belonging to him which has now encroached on the
41 abutting property. No person so entering on land of another shall store material or tools thereon.
42 After said entry, said owner shall in all respects restore said adjoining land to the condition in
43 which it was prior to said entry.