

SENATE No. 755

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 Road Newton Centre, MA 02459

SENATE No. 755

By Ms. Creem (by request), a petition (accompanied by bill, Senate, No. 755) of Howard Smolar for legislation to regulate the maintenance of encroaching vegetation. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 659 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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 Chapter 266 of the General Laws, as appearing in the 2012 Official Edition, is hereby
2 amended by 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 life, but shall
5 not include trees.

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

8 (c) Where encroaching vegetation causes actual harm or poses an imminent danger of
9 actual harm to adjoining property, the owner of the property wherein the vegetation originates

10 shall be required to remove the endangering vegetation from the abutting property up to the
11 property line. The owner of the property wherein the vegetation originates shall be allowed
12 access onto abutting properties for the purpose of determining whether such encroachment
13 reaches the level of actual harm or imminent danger which would require such action. If access
14 to a property for such inspection is denied, the owner of the property on which the vegetation
15 originates may be held harmless for any actual harm ensuing on the encroached upon property
16 due to vegetation.

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

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

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

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

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