

HOUSE No. 1001

The Commonwealth of Massachusetts

PRESENTED BY:

Lindsay N. Sabadosa

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 providing for protections from chemical protections from pesticide chemical trespass in the Commonwealth.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|------------------------------|----------------------|------------------|
| <i>Lindsay N. Sabadosa</i> | <i>1st Hampshire</i> | <i>2/14/2021</i> |
| <i>Christopher Hendricks</i> | <i>11th Bristol</i> | <i>2/26/2021</i> |
| <i>Nika C. Elugardo</i> | <i>15th Suffolk</i> | <i>2/26/2021</i> |

HOUSE No. 1001

By Ms. Sabadosa of Northampton, a petition (accompanied by bill, House, No. 1001) of Lindsay N. Sabadosa, Christopher Hendricks and Nika C. Elugardo relative to protected areas for pesticide chemicals. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act providing for protections from chemical protections from pesticide chemical trespass in the Commonwealth.

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. Section 2 of chapter 132B of the General Laws is hereby amended by
2 adding the following definitions:

3 “*Agricultural Application*”, pesticide use or application incidental to, or for the purposes
4 of, agriculture or farming, as defined under M.G.L. Ch. 128, section 1A, provided that gross
5 sales of agricultural products totaled not less than 500 dollars in the previous year, or for
6 agricultural activities without gross sales in the previous year, that gross sales of agricultural
7 products are reasonably expected to total not less than 500 dollars in the current year.

8 “*Buffer zones*”, areas in which the use or application of pesticides is prohibited, including
9 by aerial application, ground application, or other method.

10 “Pesticide chemical trespass”, the application or use of a pesticide within a buffer zone,
11 other than a pesticide classified by the United States Environmental Protection Agency as an
12 exempt material under 40 CFR § 152.25.

13 “Pesticide drift”, the movement of pesticide dust or droplets through the air at the time of
14 application or after to any site other than the area intended.

15 “Protected Area”,

16 (a) Any residential, commercial, or municipal building, hospital or other medical facility,
17 nursing home or assisted living facility, school, child care facility, or other building where
18 people gather or live and the area within a 100-foot radius surrounding these structures, provided
19 that such Protected Area shall not exceed the property line;

20 (b) Any developed recreation area open to public accommodation, including any
21 developed public or commercial campground, developed picnic area, developed park and
22 recreation facility, playground, school bus stop, or other area developed for organized recreation;

23 (c) Any other area near which pesticide exposure should be reduced to protect health or
24 the environment, including environmental justice populations, as determined by the Department
25 in consultation with the Department of Public Health and the Massachusetts Executive Office of
26 Energy and Environmental Affairs; or

27 (d) Any other area near which pesticide exposure should be reduced to protect health or
28 the environment, including environmental justice populations, as determined by the legislative
29 body of any city or town pursuant to section 18 of this chapter.

30 “Surface waters”, All waters other than groundwaters within the jurisdiction of the
31 Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs,
32 impoundments, estuaries, wetlands, coastal waters and vernal pools, except that “surface waters”
33 shall not include irrigation ditches or constructed farm ponds into which and from which no
34 stream or river flows.

35 SECTION 2. Section 5 of chapter 132B of the General Laws is hereby amended by
36 adding the following clause:

37 The department shall review and update the list of Protected Areas annually in
38 consultation with the Department of Public Health and the Massachusetts Executive Office of
39 Energy and Environmental Affairs provided that none of the Protected Areas enumerated in
40 Section 2 shall be removed.

41 SECTION 3. Chapter 132B of the General Laws is hereby amended by inserting after
42 section 6K the following section:

43 Section 6L. The agricultural application of any pesticide, other than a pesticide classified
44 by the United States Environmental Protection Agency as an exempt material under 40 CFR §
45 152.25, by aerial application, ground application, or any other method of pesticide application is
46 prohibited in buffer zones, which include the following:

47 Buffer zone of 1 mile radius from Protected Areas;

48 Buffer zone of 250 foot radius from surface waters; and

49 Additional buffer zones to be established by the Department in regulations as needed to
50 protect health and the environment.

51 If the designation of any buffer zone or protected area is determined to conflict with any
52 pesticide labeling information or any other use restriction established under this chapter or
53 through regulations promulgated thereunder, the more restrictive and health-protective
54 provisions shall apply.

55 Whenever agricultural application of pesticides occurs in an area adjacent to a protected
56 area buffer zone, the applicator shall give notice of such application by posting signs. Signs shall
57 be posted at least every 200 feet along the perimeter of the treated area and at every principal
58 entrance to the treated area facing the buffer zone. Signs shall face toward the buffer zone and be
59 placed in a manner so as not to be obstructed by vegetation, structures, or other potential
60 obstacles. Signs shall be posted 24 hours prior to application and shall remain posted until 72
61 hours after application or the expiration of the restricted entry interval stated on the pesticide's
62 label, whichever occurs later.

63 The department shall publish regulations governing the content and format of the signs,
64 but at a minimum the signs shall contain the phone number of the department's pesticide
65 complaint hotline, established under section 17 of this chapter, and an explanation that
66 complaints regarding violations of the commonwealth's pesticide laws may be filed through the
67 hotline.

68 SECTION 4. Section 14 of chapter 132B of the General Laws is hereby amended by
69 inserting in the second paragraph "section 6L," after "section 6A to 6I, inclusive,"

70 SECTION 5. Section 14 of chapter 132B of the General Laws is hereby amended by
71 adding the following clause:

72 In addition to any punishment by fines or penalties pursuant to this section, any person
73 who commits a first violation of any provision of this chapter relating to pesticide chemical
74 trespass, any regulation promulgated thereunder relating to pesticide chemical trespass, or any
75 municipal bylaw or ordinance enacted pursuant to section 18 of this chapter shall be punished by
76 immediate suspension and revocation of his or her applicator's licenses, certifications, and
77 permits issued under section 10. Such person shall be eligible for reinstatement of the revoked
78 license, certification, or permit upon reapplication and passage of any written examinations and
79 performance testing required by the department's regulations for issuance of such license,
80 certification, or permit.

81 In addition to any punishment by fines or penalties pursuant to this section, any person
82 who commits a second or subsequent violation of any provision of this chapter relating to
83 pesticide chemical trespass, any regulation promulgated thereunder relating to pesticide chemical
84 trespass, or any municipal bylaw or ordinance enacted pursuant to section 18 of this chapter shall
85 be punished by immediate suspension and revocation of his or her applicator's licenses,
86 certifications, and permits issued under section 10. Such person shall be prohibited from
87 reapplying for a certification, license, or permit within two years of such suspension and
88 revocation.

89 SECTION 6. Chapter 132B of the General Laws is hereby amended by adding after
90 section 16 the following sections:

91 Section 17. The department shall establish a process for members of the public to submit
92 complaints concerning pesticide drift, pesticide chemical trespass, or other violations of the
93 provisions of this chapter or any regulation promulgated thereunder. At a minimum, the

94 department shall allow complaints to be submitted over the phone and through a form provided
95 on the department's website.

96 The department shall establish a process for conducting an investigation of any complaint
97 received in order to determine whether a violation occurred. The department shall maintain a
98 publicly accessible online docket of complaints received, the outcome of its investigation, and
99 any penalties assessed or enforcement actions taken.

100 If during any calendar year the department determines that on three or more occasions
101 pesticide drift has occurred in connection with the use or application of any registered pesticide,
102 notwithstanding the applicator or applicators' compliance with the provisions of this chapter and
103 regulations promulgated thereunder, the commissioner shall direct the pesticide board
104 subcommittee to conduct a review of that pesticide's registration. The purpose of this review
105 shall be to determine whether the pesticide's registration must be suspended or modified
106 because, when used as registered and in compliance with the department's regulations for
107 application, the pesticide may drift or otherwise cause unreasonable adverse effects on the
108 environment. Nothing in this section shall prohibit the department or the pesticide board
109 subcommittee from conducting such review without first determining that pesticide drift has
110 occurred on three or more occasions during any calendar year.

111 Section 18. The legislative body of any city or town, in consultation with the
112 municipality's board of health and, if applicable, the municipality's conservation commission,
113 may designate additional protected areas or increase the distance of buffer zones by bylaw or
114 ordinance deemed necessary to protect health or the environment, provided that no buffer zone
115 shall exceed a three mile radius from a protected area.