

**SENATE . . . . . No. 555**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Adam G. Hinds*

*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:	
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>3/18/2021</i>

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By Mr. Hinds, a petition (accompanied by bill, Senate, No. 555) of Adam G. Hinds and Susan L. Moran for legislation to provide for protections from chemical protections from pesticide chemical trespass in the Commonwealth. Environment, Natural Resources and Agriculture.

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The Commonwealth of Massachusetts

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