

Legal – Statutes
Chapter 85 of the Acts of 2000
**AN ACT PROTECTING CHILDREN AND FAMILIES FROM HARMFUL
PESTICIDES.**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. (a) The general court finds that:

(1) the people of the commonwealth have a fundamental right to know about the use of pesticides;

(2) pesticides contain toxic substances, many of which may have a detrimental effect on human health and the environment and, in particular, have developmental effects on children;

(3) citizens of the commonwealth are being denied their right to know and their ability to make informed decisions about the level of pesticide exposure to them and their children; and

(4) information compiled regarding pesticide use in the commonwealth is not maintained in a manner which is useful to the public, thereby making it difficult to assess and address the potential health and environmental impact of pesticide use in the commonwealth;

(b) The policy goals of this act are to:

(1) prevent unnecessary exposure of children to chemical pesticides;

(2) promote safer alternatives to pesticides;

(3) ensure that clear and accurate notification concerning the use of pesticides in schools, day care centers and school age child care programs be made available so that measures may be taken to prevent and address pest problems effectively without endangering children or adults;

(4) promote the use of integrated pest management techniques to reduce the need for reliance on chemical pesticides; and

(5) develop a comprehensive, reliable and cost-effective system for collecting and organizing information on all categories of pesticide use in the commonwealth for review by government agencies, researchers, policy makers and the public to ensure the public health and safety and to protect the environment of the commonwealth.

SECTION 2. Chapter 28A of the General Laws is hereby amended by inserting after section 10B the following section:-

Section 10C. Any person who operates a school age child care program or a day care center as defined in section 2 of chapter 132B, shall comply with the

requirements regarding pesticide applications as set forth in sections 6C to 6I, inclusive, of said chapter 132B.

SECTION 3. Section 68 of chapter 71 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by inserting after the sixth sentence the following sentence:- Each school shall comply with the requirements regarding pesticide applications as set forth in sections 6C to 6I, inclusive, of chapter 132B.

SECTION 4. Section 2 of chapter 132B of the General Laws, as so appearing, is hereby amended by inserting after the definition of "Advisory council" the following definition:-

"Agency", any executive office, department, division, agency, board, branch, bureau or commission of the commonwealth.

SECTION 5. Said section 2 of said chapter 132B, as so appearing, is hereby further amended by inserting after the definition of "Animal" the following definition:-

"Anti-microbial pesticide", a pesticide that is used for the control of microbial pests, including, but not limited to, viruses, bacteria, algae and protozoa, and is intended to disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms. Anti-microbial pesticide shall not include any fungicide or pesticide used on plants, turf or other vegetation or for ornamental uses.

SECTION 6. Said section 2 of said chapter 132B, as so appearing, is hereby further amended by inserting after the definition of "Commissioner" the following definition:-

"Day care center", any public or private facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center or preschool, or known under any other name, which receives children not of common parentage who are not more than six years of age, or who are not more than 21 years of age if such children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Day care center shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of such system are primarily limited to kindergarten, nursery or related preschool services; periodic religious instruction classes conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation.

SECTION 7. Said section 2 of said chapter 132B, as so appearing, is hereby further amended by inserting after the definition of "Insect" the following definition:-

"Integrated pest management", a comprehensive strategy of pest control whose major objective is to achieve desired levels of pest control in an environmentally responsible manner by combining multiple pest control measures to reduce the need for reliance on chemical pesticides; more specifically, a combination of pest controls which addresses conditions that support pests and may include, but is not limited to, the use of monitoring techniques to determine immediate and ongoing need for pest control, increased sanitation, physical barrier methods, the use of natural pest enemies and a judicious use of lowest risk pesticides when necessary.

SECTION 8. Said section 2 of said chapter 132B, as so appearing, is hereby further amended by inserting after the definition of "Registrant" the following four definitions:-

"School", any public or private school for preschool, elementary, middle or high school students.

"School administration", a school committee, private school board of directors, or other body of school supervisory officers.

"School age child care program", any public or private program or facility operated on a regular basis which provides supervised group care for children not of common parentage who are enrolled in kindergarten and are of sufficient age to enter first grade the following year, or an older child who is not more than 14 years of age, or not more than 21 years of age if such child has special needs. Such a program may operate before and after school and may also operate during school vacation and holidays. A school age child care program shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of such system are primarily limited to a school age day care program; periodic religious instruction classes conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation.

"Standard written notification", includes the following information: the approximate dates on which the spraying, release, deposit or application of a pesticide shall commence and conclude; the specific location of the anticipated application; the product name and type of each pesticide to be used; a department-approved fact sheet and United States Environmental Protection Agency registration number for each pesticide; a description of the purpose of the pesticide application; and a department-approved statement describing ways to minimize exposure, and precautions to be taken, especially for sensitive individuals such as children, the elderly, pregnant women and those with health problems.

SECTION 9. Said chapter 132B is hereby further amended by inserting after section 5 the following section:-

Section 5A. The department shall promote the use of biologic controls, integrated pest management, sustainable agriculture and other alternate pest control methods through education, technical assistance and research in order to reduce or eliminate, whenever possible, human or environmental exposures to chemical pesticides. Said department shall submit an annual report to the clerks of the senate and the house of representatives and the joint committee on natural resources and agriculture describing the efforts taken and the progress made toward reducing pesticide use, furthering the use of integrated pest management and other alternate pest control methods in the commonwealth.

SECTION 10. Said chapter 132B is hereby further amended by striking out section 6B, as appearing in the 1998 Official Edition, and inserting in place thereof the following section:-

Section 6B. (a) No gas, electric, telephone or other utility company licensed to do business in the commonwealth, nor any agency of the commonwealth or any of its political subdivisions, nor any authority, as defined in section 39 of chapter 3, nor any private entity or their agent, shall spray, release, deposit or apply any pesticide to any land which it owns, or as to which it holds an easement or similar right and over which it maintains power, high tension or other lines, or to any roadway, railway, or other transportation layout, without first notifying the department and, by registered mail, the mayor, city manager or chair of the board of selectmen and the conservation commission in the city or town where such application is to occur 21 days before such spraying, release, deposit or application, and without first publishing conspicuous notice in at least one newspaper of general circulation in each city or town where such land lies at least 48 hours prior to such spraying, release, deposit or application. Such notice shall appear in the local section of the newspaper and measure at least four by five inches in size. The published notice shall include: the method and locations of pesticide spraying, release, deposit or application; the approximate dates on which spraying, release, deposit or application shall commence and conclude, but such spraying, release, deposit or application shall not commence more than ten days before nor conclude more than ten days after such approximate dates; a list of potential pesticides to be used; a description of the purpose of the spraying, release, deposit or application; and the name, title, business address and phone number of a designated contact person from whom any citizen may request further information.

(b) The notice to the city or town where the affected land lies shall contain the following information: the method and locations of pesticide spraying, release, deposit or application; the approximate dates on which such spraying, release, deposit or application shall commence and conclude, but such spraying, release, deposit or application shall not commence more than ten days before nor conclude more than ten days after such approximate dates; the type of pesticide to be used and a copy of all information supplied by the manufacturers thereof relative to the pesticide; a department-approved fact sheet and United States Environmental Protection Agency registration number for each pesticide; the name, title, business address and phone number of the certified commercial applicator, certified private applicator or licensed applicator, or the contractor, employers or employees responsible for carrying out the pesticide spraying, release, deposit or application.

(c) Notwithstanding any other provision of law, all agencies of the commonwealth and all authorities, as defined in section 39 of chapter 3, shall develop policies to eliminate or, if necessary, reduce the use of pesticides for any vegetation management purpose along any roadway.

(d) Any employee of any state agency, or authority, as defined in section 39 of chapter 3, when spraying, releasing, depositing or applying pesticides, supervising the use of pesticides, or when present during the spraying, release, deposit or application of pesticides, shall be provided with personal protection equipment and clothing in conformance with all federal and state laws and regulations pertaining to pesticide applications. This shall include, but not necessarily be limited to, protections according to Material Safety Data Sheets (MSDS), the product label, and any other supportive technical data provided by the manufacturer.

SECTION 11. Said chapter 132B is hereby further amended by inserting after section 6B the following nine sections:-

Section 6C. (a) Pesticides shall not be sprayed, released, deposited or applied indoors while children are on the property of a school, day care center or school age child care program, except for those pesticides listed in section 6F.

(b) Pesticides shall not be sprayed, released, deposited or applied on the outdoor property of a school, day care center or school age child care program while children are located in, on, or adjacent to the area of the pesticide application.

(c) (1) Whenever pesticides are to be sprayed, released, deposited or applied outdoors at a school, day care center or school age child care program, the school administration, day care center operator or school age child care program operator shall ensure that employees, pupils or supervised children and their parents or guardians receive standard written notification, as defined in section 2, at least two working days before pesticides are sprayed, released, deposited or applied, provided that such spraying, release, deposit or application of pesticides shall not commence prior to the approximate dates set forth on the standard written notification, and shall not conclude more than 72 hours after such approximate dates.

(2) Such notification policy shall apply at all times except during periods when classes are not scheduled for at least five consecutive days after the spraying, release, deposit or application or when day care or school age child care facilities are not scheduled to be open for at least five consecutive days after the spraying, release, deposit or application.

(3) Information to be included in the standard written notification shall be provided to the school administration, day care center operator, or school age child care program operator by the certified commercial applicator, certified private applicator, or licensed applicator, or the contractor, employers or employees responsible for carrying out the pesticide spraying, release, deposit or application. Larval mosquito control applications using pesticides classified as category four pesticides by the United States Environmental Protection Agency, as applied by mosquito control projects under chapter 252, are exempt from the notification requirements of this section. This section shall not apply to any use of an anti-microbial pesticide as defined in section 2.

Section 6D. Each school administration, day care center operator, or school age child care program operator shall ensure that standard written notification is posted in a common area of its facility at least two working days before the outdoor spraying, release, deposit or application of a pesticide and for at least 72 hours following the spraying, release, deposit or application. Treated areas will be posted with clear and conspicuous warning signs along the perimeter in accordance with regulations to be promulgated by the department governing indoor and outdoor spraying, release, deposit or application of pesticides at schools, day care centers and school age child care programs. Larval mosquito control applications using pesticides classified as category four pesticides by the United States Environmental Protection Agency, as applied by mosquito control projects under chapter 252, are exempt from the notification requirements of this section. This section shall not apply to any use of an anti-microbial pesticide as defined in section 2.

Section 6E. (a) On or before November 1, 2001, each school, day care center and school age child care program in the commonwealth shall adopt and implement, in accordance with any regulations promulgated by the department pursuant to this chapter, an integrated pest management plan. The plan shall cover both indoor and outdoor areas. The department shall produce a generic

integrated pest management plan that may be adopted by any school, day care center or school age child care program. One copy of the plan adopted by the school, day care center or school age child care program shall be filed with the department, and at least one additional copy shall be kept on site and made available to the public upon request pursuant to section 10 of chapter 66. Every agency of the commonwealth shall develop and implement integrated pest management plans and procedures for all buildings and grounds owned or managed by the commonwealth.

(b) No person shall spray, release, deposit or apply or supervise the spraying, release, deposit or application of any pesticide in, on, or around structures or grounds of a school, day care center or school age child care program unless that person is a certified commercial applicator, certified private applicator, licensed applicator, or is under the supervision of a certified commercial applicator, certified private applicator or licensed applicator.

Section 6F. Beginning November 1, 2001, pesticide products eligible for use indoors on the facility grounds of any school, day care center or school age child care program shall be limited to the following:

(a) Anti-microbial pesticides;

(b) Rodenticides placed in tamper resistant bait stations or placed in areas inaccessible to children and the general public;

(c) Ready-to-use dust, powder or gel formulations of insecticide applied in areas inaccessible to children and the general public;

(d) Insecticidal baits placed in tamper resistant bait stations or in areas inaccessible to children and the general public;

(e) Termiticides used only in the presence of an active termite infestation and when non-chemical pesticide alternatives have been determined to be ineffective; and

(f) Pesticides classified by the United States Environmental Protection Agency as exempt materials under 40 CFR 152.25.

Section 6G. Beginning November 1, 2001, pesticide products eligible for use on the outdoor grounds of any school, day care center or school age child care program shall be limited to the following:

(a) pesticides used in accordance with the facility's integrated pest management plan filed with the department and maintained on site;

(b) pesticides other than those classified as known, likely or probable human carcinogens by the United States Environmental Protection Agency, or equivalently categorized by the department, except as provided for in section 6H;

(c) pesticide products that do not contain inert ingredients categorized as "List 1: Inerts of Toxicological Concern" or any equivalent categorization by the United States Environmental Protection Agency; and

(d) pesticides that are applied for reasons other than purely aesthetic purposes, except that any municipality, city or town may allow the use of pesticide products for purely aesthetic purposes on the outdoor grounds of any school, day care center or school age child care program.

Section 6H. (a) If a school official or an operator of a day care center or school age child care program determines that a human health emergency warrants the use of a pesticide not otherwise allowed under this chapter, or warrants its use sooner than two days after providing the required standard written notification, such official or operator may apply for a single-use waiver from the appropriate municipal board of health or agent or director of public health or the department.

(b) The department or appropriate municipal board of health or agent or director of public health shall determine if such a waiver is warranted based on the following criteria:

(1) whether the pest situation poses an immediate threat to human health; and

(2) whether no viable alternatives to the use of chemical pesticides exist.

As a condition of approval, the appropriate municipal board of health or agent or director of public health or the department shall require a commitment from the school official or operator of a day care center or school age child care program that the underlying causes of the pest outbreak will be identified and addressed in order to prevent future outbreaks.

(c) In such an emergency situation, the school official or operator of a day care center or school age child care program shall ensure that conspicuous warning signs are posted near the site of the spraying, release, deposit or application prior to, and for at least 72 hours after the spraying, release, deposit or application. Treated areas will be posted with clear and conspicuous warning signs along the perimeter in accordance with regulations to be promulgated by the department governing indoor and outdoor spraying, release, deposit or application of pesticides at schools, day care centers and school age child care programs. In such an emergency situation, the school official or operator of a day care center or school age child care program shall also ensure that standard written notification is provided to employees, pupils or supervised children and their parents or guardians immediately prior to or, if necessary, immediately following the emergency spraying, release, deposit or application. A record of the emergency event, including the identification of the cause and the actions taken to address it, shall be maintained as a part of the records required under section 6I.

Section 6I. A written or electronic record of any and all chemical pesticide spraying, release, deposit or application made at a school, day care center or school age child care program in the commonwealth shall be maintained on site for a period of not less than five years, and shall be made available to the public upon request pursuant to section 10 of chapter 66.

Section 6J. Notwithstanding any other provisions of this chapter, sections 6C to 6I, inclusive, shall not apply to the spraying, release, deposit or application of any pesticide made as a part of a supervised training program at any of the state-aided and approved vocational-technical or agricultural schools in the commonwealth.

Section 6K. The department shall conduct a review of anti-microbial pesticides, as defined in section 2, to determine whether and to what extent they should be subject to the provisions of this chapter.

SECTION 12. Said chapter 132B is hereby further amended by inserting after section 7 the following section:-

Section 7A. (a) Subject to appropriation, the department shall establish and implement a pesticide use reporting system for use by government agencies, researchers, policy makers and the public to ensure the public health and safety and to protect the environment of the commonwealth. In establishing and implementing the system, said department shall design, develop and implement the system in order to collect, evaluate, summarize, retain and report information on the use of pesticides in each major category of use in the commonwealth, including agriculture, forestry, industrial, commercial and homeowner uses. Said department shall, at least one time each year, collect the best data practicable from each major category of pesticide use in a manner that will allow such data to be used for public health purposes, including, but not limited to, epidemiological studies, and for environmental protection purposes. Such data shall be collected in a manner which minimizes reporting costs. Said department shall begin operation of the required statewide data reporting program on or before January 31, 2002.

(b) The secretary of environmental affairs shall appoint a pesticide stakeholder work group to advise the department in developing the pesticide use reporting system required by this section. Said secretary shall appoint the following members of the work group: one pesticide applicator, one pesticide dealer, one public health expert or researcher familiar with pesticides and their impact on public health, one representative from the department of public health, one representative from the department of environmental protection, one representative from the department's pesticide board established by section 3, and one representative from each of the following organizations: one environmental organization, one labor organization, one public health organization, one public water supplier and one agricultural organization. In carrying out its responsibilities under this section, the department shall consult with the work group appointed under this section and convene meetings of the work group as necessary. All meetings of the work group shall be open to the public and shall include an opportunity to receive recommendations and comments from members of the public. The work group shall make specific recommendations on stable and sufficient funding mechanisms to support the pesticide reporting program.

(c) Said department shall conduct an analytical review of any issues that must be resolved in order to establish a valid, cost-effective pesticide use reporting system in the commonwealth. The review shall be conducted in consultation with the work group appointed under this section, and its conclusions shall be published not later than January 31, 2001. As part of the analytical review required by this section, the department shall consider whether and to what extent use of anti-microbial pesticides, as defined in section 2, shall be part of the pesticide use reporting system. In implementing the pesticide use reporting system, the department shall, beginning January 31, 2003, and annually thereafter, make available data on pesticide use in the commonwealth.

(d) Said department shall develop protocols for the exchange of information with the department of public health or other state agencies for the purpose of conducting research related to the public health and the environment. Said department shall also establish policy and adopt rules relating to the public release of pesticide use information. The policy and rules may not reveal the identity of the owner or lessee of a specific property or the address of the property itself where a pesticide has been applied, and shall maintain the confidentiality of that information. Nothing in the policy or rules adopted by said department shall limit access to data for the following purposes: (1) information

obtained as part of any investigation under any other provision of law; (2) the release of information obtained exclusively under this chapter to any other local, state or federal agency, if the local, state or federal agency has agreed to maintain the confidentiality of any information that is required to be treated as confidential under this subsection, unless the public interest by clear and convincing evidence requires disclosure in the particular instance; and (3) the release of information obtained exclusively under this chapter to a health or environmental researcher acting in an official capacity from an accredited university or accepted research institute who agrees to maintain the confidentiality of any information that is required to be treated as confidential under this section.

(e) Nothing in this section shall be construed to create a new private right of action against any pesticide user or retail pesticide dealer.

SECTION 13. The eighth paragraph of section 10 of said chapter 132B, as appearing in the 1998 Official Edition, is hereby amended by adding the following sentence:- Each examination shall include an evaluation of the applicant's competence with respect to the use of integrated pest management.

SECTION 14. Section 14 of said chapter 132B, as so appearing, is hereby amended by striking out, in line 9, the words "six A or six B" and inserting in place thereof the following:- 6A to 6I, inclusive, or section 7A.

SECTION 15. Said chapter 132B is hereby further amended by inserting after section 14 the following section:- Section 14A. (a) The department may adopt and promulgate such regulations as may be necessary for the enforcement of sections 6C to 6I, inclusive, and the licensing requirements of section 10. Said department may assess a civil administrative penalty of up to \$1,000 against any person or school administration who violates the requirements of sections 6C to 6I, inclusive, or any regulation promulgated under such sections.

(b) Said department may assess a civil administrative penalty of up to \$1,000 against any person who violates the licensing requirement of section 10.

(c) Prior to assessment of the penalty, said department shall provide written notice and an opportunity to correct the violation within 90 days of the issuance of the notice of violation. This penalty shall be assessed in addition to any other civil penalty otherwise provided for by law. Notice of assessment of a penalty pursuant to this section shall be made by service in hand, or by certified mail, return receipt requested, and shall state the amount of the administrative penalty, the date the penalty shall be due, a statement of the violator's right to an adjudicatory hearing pursuant to chapter 30A regarding the assessment, a statement of the actions the person may take in order to avoid the assessment of the penalty or to avoid waiving the right to a hearing relative to the penalty, and the manner of acceptable payment if an election to waive a hearing is made.

A person shall be deemed to have waived all right to an adjudicatory hearing unless, within 21 days of the date of the department's notice, the person files a written notice, by hand or by certified mail, return receipt requested, requesting such adjudicatory hearing. In the event that such request is not received in accordance with this section, the proposed administrative penalty shall become final and payment shall be due in accordance with the notice.

SECTION 16. Said chapter 132B is hereby further amended by adding the following section:-

Section 16. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Children and Families Protection Fund. There shall be credited to the fund any penalties collected for violations of sections 6C to 6I, inclusive, and any income derived from the investment of amounts credited to the fund. Amounts credited to the fund shall be used, subject to appropriation, for the implementation and enforcement of said sections 6C to 6I.

SECTION 17. This act shall take effect on November 1, 2000.