

Model State School Pest Management Act

A model law for state governments
seeking to protect children and school employees from pesticides.



Beyond Pesticides/National Coalition Against the Misuse of Pesticides

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Editor's Note:

It is important to note that this is a very comprehensive, strict bill in regards to what and how pesticides can be used at schools. This model bill prohibits the use of the most toxic pesticides from being used in schools, provides right-to-know, and establishes school IPM. Depending on the political climate in your state - banning the worst chemicals may not be feasible. I have included it in this model to show what legislation that truly protects children from pesticides at schools looks like. Massachusetts is the only state that bans specific high hazard pesticides from certain settings in schools, otherwise bans are seen on the local level.

The essential provisions that should be included in a school pest management law are a strong, comprehensive definition and framework for IPM (least toxic pesticides only as a last resort) and universal prior notification and posting.

Because of the difficulties in getting this model passed on the state level, and the probability of having to compromise, Beyond Pesticides/NCAMP would like to work closely with you on language that could be omitted or reworded to better suit the politically climate of your state and still be a meaningful bill.

I look forward to working with you on school legislation and hope the model bill is helpful to your efforts. If you have any additional questions or comments, please do not hesitate to contact me.

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MODEL STATE SCHOOL PEST MANAGEMENT ACT*

Introduced by _____.

An Act Protecting Children and School Staff from Toxic Pesticides.

Be it enacted by the Senate and House of Representatives of the _____ (General Court or General Assembly of state) _____ assembled,

SECTION 1. Legislative Findings.

(a) The _____ (general court or general assembly) _____ finds that:

- (1) in 1992, the National Parent Teacher Association passed a resolution calling for the reduced use of pesticides in schools and calling on policymakers to consider all possible alternatives before using pesticides;
- (2) the National Education Association and numerous other national public interest organizations have announced support for reducing or eliminating pesticide use in schools;
- (3) childhood cancer is continuing to increase at the alarming rate of 1 percent per year;
- (4) approximately 4,800,000 children in the United States under the age of 18 have asthma, the most common chronic illness in children, and the incident of asthma is on the rise;
- (5) children are more susceptible to hazardous impacts from pesticides than are adults;
- (6) the U.S. Environmental Protection Agency has recommended the use of an integrated pest management system by school districts, which emphasizes non-chemical approaches to pest control, such as sanitation and maintenance;
- (7) an integrated pest management system provides long-term health and economic benefits;
- (8) the people of __ (state) __ have a fundamental right to know about the use of pesticides;
- (9) 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;
- (10) citizens of __ (state) __ 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

* Beyond Pesticides/NCAMP's Model State School Pest Management Act is based on existing state laws in Maryland and Massachusetts and pending federal legislation, the *School Environment Protection Act* (SEPA). Based on Beyond Pesticides/NCAMP's report, *The Schooling of State Pesticide Laws – 2000*, just over half of the states, or 31 states have adopted pesticide acts and regulations that address the protection of children by specifically focusing on pesticide use in, around or near schools.

(11) compiled information regarding pesticide use in the state 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 (state) .

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

- (1) prevent unnecessary exposure of children to chemical pesticides and provide the healthiest learning environment, playgrounds, and playfields possible;
- (2) promote safer alternatives to chemical pesticides while preventing economic and health damage caused by pests;
- (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; and,
- (4) implement the use of integrated pest management techniques to reduce the need for reliance on chemical pesticides.

SECTION 2. Definitions. In this act, the following words have the meanings indicated.

(a) "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 pesticides shall not include any fungicide or pesticide used on plants, turf or other vegetation or for ornamental uses.

(b) "Contact person" means an individual knowledgeable about integrated pest management systems and designated by a local educational agency of a school district.

(c) "Crack and crevice treatment" means the application of small quantities of a pesticide in a building into openings such as those commonly found at expansion joints, between levels of construction, and between equipment and floors.

(d) "Day care center" means 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.

(e) "Emergency" means an urgent need to mitigate or eliminate a pest that threatens the health or safety of a student or staff member.

(f) "Integrated pest management" means a managed pest control program that eliminates or mitigates economic and health damage caused by pests, minimizes the use of pesticides and the risk to human health and the environment associated with pesticide applications, and uses:

- (1) integrated methods;
- (2) site or pest inspections;
- (3) pest population monitoring;
- (4) an evaluation of the need for pest control; and,
- (5) one or more pest control methods, including sanitation, structural repairs, mechanical and living biological controls, other non-chemical methods, and, if nontoxic options are unreasonable and have been exhausted, the least toxic pesticide.

(g) "Least toxic pesticide" means boric acid and disodium octoborate tetrahydrate; silica gels; diatomaceous earth; nonvolatile insect and rodent baits in tamper resistant containers or for crack and crevice treatment only; microbe-based pesticides; pesticides made with essential oils (not including synthetic pyrethroids) without toxic synergists; and materials for which the inert ingredients are nontoxic and disclosed. Least toxic pesticide does not include a pesticide that: is determined by the U.S. Environmental Protection Agency as a probable, likely, or known carcinogen or endocrine disruptor; is a mutagen, reproductive toxin, developmental neurotoxin, or immune system toxin; is classified by the U.S. Environmental Protection Agency as a toxicity I or II pesticide; is in the organophosphate or carbamate chemical family; or contains inert ingredients categorized as "List 1: Inerts of Toxicological Concern." Least toxic pesticide does not include any application of pesticide using a broadcast spray, dust, tenting, fogging, or baseboard spray application.

(h) "Pesticide" means any substance or mixture of substances, including herbicides and bait stations, intended for preventing, destroying, repelling, or mitigating any pest; use as a plant regulator, defoliants, or desiccant; or use as a spray adjuvant such as a wetting agent or adhesive. Pesticide does not include: an antimicrobial agent, such as a disinfectant, sanitizer, or deodorizer, used for cleaning purposes.

(i) "School" means any public or private school for preschool, kindergarten, elementary, or secondary school students, and for the purposes of this act shall also include day care centers and school age child care programs.

(j) "School age child care program" means 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.

(k) "School grounds" means the area outside of the school buildings controlled, managed, or owned by the school or school district and includes a lawn, playground, sports field, and any other property or facility controlled, managed or owned by a school.

(l) "Space spraying" means application of a pesticide by discharge into the air throughout an inside area and includes the application of a pesticide using a broadcast spray, dust, tenting, fogging, or space spraying does not include crack and crevice treatment.

(m) "Staff member" means an employee of a school system and includes administrators, teachers, and other support personnel. Staff member does not include: a registered employee or applicator certified by the department, or a person assisting in the application of a pesticide.

(n) "Universal notification" means written notice by a school or school district to all parents and guardians of children attending the school, and staff members of the school.

Section 3. General.

(a) If, on the date of enactment of this act, a locality maintains an IPM system that meets the standards and criteria established by this act, the school or local educational agency of a school district may continue to implement the system in a school or school district in accordance with this act.

(b) The requirements of this act apply to school buildings and school grounds including any public or private school for preschool, elementary, or secondary school students, day care centers and school age child care programs.

(c) This act shall apply to any person that applies a pesticide in a school or on a school ground, including a custodian, staff member, or commercial applicator.

(d) This act shall apply to a school during the school year and during holidays and the summer months, if the school is in use, with notice provided to all staff members and the parents or guardians of the students that are using the school in an authorized manner.

Section 4. State School Integrated Pest Management.

(a) The (state lead pesticide agency), in consultation with the (state) Department of Education, shall develop and update uniform standards and criteria for implementing integrated pest management systems in schools.

(b) State School Integrated Pest Management Advisory Board.

(1) The Director of the (state lead pesticide agency), in consultation with the Director of the (state) Department of Education, shall establish a School Integrated Pest Management Advisory Board to:

- (A) establish uniform standards and criteria for developing integrated pest management systems and policies in schools;
- (B) develop standards for the use of least toxic pesticides in schools; and
- (C) advise the Director of the (state lead pesticide agency) on any other aspect of the implementation of this act.

(2) The Board shall be composed of 12 members and include 1 representative from each of the following groups:

- (A) parents;
- (B) public health care professionals;
- (C) medical professionals;
- (D) state integrated pest manage system coordinator;
- (E) independent integrated pest management specialists;
- (F) environmental advocacy groups;
- (G) children's health advocacy groups;
- (H) trade organization for pest control operators;
- (I) teachers and school staff members;
- (J) school maintenance staff and school facility managers;
- (K) school administrators; and,
- (L) school board members.

(3) Responsibilities of the board include:

- (A) review implementation of this act;
- (B) review and make recommendations to the Director of the (state lead pesticide agency) with respect to proposed amendments to the list of least toxic pesticides; and,
- (C) recommend to the Director of the (state lead pesticide agency) restrictions on pesticide use in school buildings and on school grounds.

Section 5. Local Educational Agency of a School District.

(a) A local educational agency of a school district shall develop and implement in its schools an integrated pest management system approved by the Director of the (state lead pesticide agency).

(b) The local educational agency of a school district shall establish a school IPM committee to develop implementation guidelines and oversee implementation of the new policy. The committee shall be comprised of parents, students, teachers, school administrators, representatives from the school district administration, facility and landscape staff, any pest control company or companies contracted by the school district to manage pests, and community environmental and public health organizations.

- (e) A local educational agency of a school district shall designate a contact person. The contact person shall:
- (1) act as a contact for inquiries about the integrated pest management system;
 - (2) maintain material safety data sheets and labels for all pesticides which may be used inside or outside schools within the school district of the county board;
 - (3) maintain scheduling of all pesticide usage for schools in the school district;
 - (4) obtain periodic updates and training from State integrated pest management system experts;
 - (5) on request, make the data available to the public for review; and,
 - (6) present an annual report to the school board evaluating the progress of the IPM program.

Section 6. Notice of Integrated Pest Management Plan.

(a) At the beginning of each school year, each local educational agency of a school district shall include a notice of the integrated pest management system of the school district in school calendars or other forms of universal notification.

(b) After the beginning of each school year, a local educational agency of a school district shall provide the notice required under this section to a newly employed staff member or the parent or guardian of a student newly enrolled during the school year.

(c) The notice shall include:

- (1) a description of the integrated pest management system of the school district;
- (2) a list of all pesticides, including any least toxic pesticide, that may be used in a school building or on a school ground;
- (3) the name, address, and telephone number of the contact person of the school district; and
- (4) a statement that the contact person maintains the product label or material safety data sheet (MSDS) of each pesticide used by the school in buildings and on school grounds, that the label or MSDS is available for review by the public upon request, and that the contact person is available to parents, guardians, and staff members for information and comment.

Section 7. Pesticide Notification.

(a) Universal Notification.

(1) Not less than 72 hours before a pesticide, other than a least toxic pesticide, is applied in a school building or on school grounds, the school or school district shall provide to each parent and guardian of each student enrolled at the school and each staff of the school, notice that includes:

- (A) the common name, trade name, and U.S. Environmental Protection Agency registration number of the pesticide;
- (B) a description of the location of the application of the pesticide;
- (C) a description of the date and time of application, except that, in the case of outdoor pesticide applications, each notice shall include three dates, in chronological order, that the outdoor pesticide applications may take place if the preceding date is canceled;
- (D) the statement that "The Office of Pesticide Programs of the U.S. Environmental Protection Agency has stated: 'Where possible, persons who potentially are sensitive, such as pregnant woman and infants (less than 2 years old), should avoid any unnecessary pesticide exposure;'"

- (E) a description of potential adverse effects of the pesticide based on the material safety data sheet of the pesticide;
- (F) a description of the reasons for the application of the pesticide;
- (G) the name and telephone number of the contact person of the school district; and
- (H) any additional warning information related to the pesticide.

(2) The school or school district may provide the notice required by subsection (a)(1) by:

- (A) written notice sent home with the student and provided to the staff member;
- (B) a telephone call;
- (C) direct contact; or
- (D) written notice mailed at least one week before the application.

(3) If the date of the application of the pesticide needs to be extended beyond the period required for notice under this section, the school or school district shall reissue the notice under this section for the new date of application.

(b) Posted Notification Signs.

(1) At least 72 hours before a pesticide, other than a least toxic pesticide, is used by a school, the school or school district shall post a sign that provides notice of the application of the pesticide

- (A) in a prominent place that is in or adjacent to the location to be treated; and
- (B) at each entrance to the building or school ground to be treated.

(2) A sign shall be posted as required under subsection (b)(1) for the application of a pesticide shall:

- (A) remain posted for at least 72 hours after the end of the treatment;
- (B) be of uniform design with a symbol people who cannot read can easily understand; and,
- (C) state the same information as that required for universal notification of the application under subsection (a)(1).

(3) Sign Dimensions.

- (A) If an application is made on school grounds the dimensions of each sign shall be at least 16 inches by 20 inches.
- (B) If an application is made in a school building, the dimensions of each sign shall be at least 8 ½ inches by 11 inches.

(4) In the case of outdoor pesticide applications, each sign shall include three dates, in chronological order, that the outdoor pesticide application may take place if the preceding date is cancelled due to weather.

Section 8. Emergency Pesticide Use.

(a) A school may apply a pesticide, subject to section 9, in a school or on school grounds without complying with section 7 only if a pest problem is deemed an emergency by the school IPM committee established under section 5(b).

(b) Not later than the earlier of the time that is 24 hours after a school applies a pesticide under this section or on the morning of the next school day, the school or school district shall provide to each parent or guardian of student enrolled at the school, and staff member of the school, notice of the application of the pesticide for emergency pest control that includes:

- (1) the information required for a notice under section 7 of this act;
- (2) a description of the problem and the factors that qualified the problem as an emergency that threatened the health or safety of a student or staff member; and

(3) a description of the steps the school will take in the future to avoid emergency application of a pesticide under this section.

(c) A school applying a pesticide under this section shall post a sign warning of the pesticide application at the time of the pesticide application and in accordance with section 7(b).

(d) If a school applies a pesticide under this section, the local educational agency of a school district shall modify the integrated pest management plan of the school district to minimize the future applications of pesticides under this section.

(e) A record of the emergency pesticide use, 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 10 of this act.

Section 9. School Pesticide Use.

(a) Pesticides shall not be made on a routine schedule (e.g. seasonal, monthly, or weekly).

(b) Pesticides shall only be used indoors when children are not on the property of a school, except for those pesticides defined as least toxic pesticides.

(c) Pesticides shall only be used on school grounds when children are not located in, on, or adjacent to the area of the pesticide application, except for those pesticides defined as least toxic pesticides.

(d) Pesticides, other than least toxic pesticides, shall not be used when a school or school ground is occupied or in use or will be during the 24 hour period beginning at the end of the treatment.

(e) A local educational agency or school may use a pesticide during a school year only if the use of the pesticide has been disclosed in the notice required under section 6 at the beginning of the school year.

(f) Pesticides that are in the organophosphate or carbamate family shall not be used in school buildings or on school grounds.

(g) Pesticides that contain inert ingredients appearing on U.S. Environmental Protection Agency's "List 1: Inerts of Toxicological Concern" shall not be applied in school buildings or on school grounds.

(h) Pesticides shall not be used for purely aesthetic purposes only.

(i) U.S. EPA acute toxicity category I and II pesticides shall not be used in school buildings or on school grounds.

(j) Pesticides identified by the State of California as chemicals known to the state of California to cause cancer, developmental or reproductive toxicity pursuant to California Safe Drinking Water Toxic Enforcement Act of 1986 (Proposition 65) shall not be used in school buildings or on school grounds.

(k) Pesticide applications made via fogging or space spraying shall not be used at schools.

Section 10. Record Keeping.

(a) A written or electronic record of all pesticide applications made at a school shall be maintained on site for a period of not less than seven years, and shall be made available to the public upon request.

(b) The record shall be completed on the day of the pesticide application, and shall include, but not limited to:

- (1) the purpose for the desired application(s);
- (2) the date and time of the application;
- (3) the application area;
- (4) the brand name and ingredients (active ingredients) of the pesticide product and the name of the pesticide manufacturer and the federal EPA registration number;
- (5) quantity used of the pesticide and method of application;
- (6) least toxic and non-chemical alternative methods or treatments available to accomplish the desired objectives and the reasons why the application of the proposed pesticide was chosen;
- (7) the possible adverse effects to humans as stated on the label or Material Safety Data Sheet; and,
- (8) the name of the individual who applied the pesticide.

(c) The school district shall annually review its pest management program to evaluate how well its pest prevention and control objectives are being met, and to identify areas where improvement is needed. The report will be provided to school board members and made available to the public upon request. Summary information and notice of the annual report's availability will be provided along with the notice of the schools district's Integrated Pest Management Plan under section 6. The school district shall prepare a report containing the following information:

- (1) quantities of each pesticide, including least toxic pesticides, applied during the year;
- (2) target pest for each pesticide used;
- (3) cost of the school district's pest management program for the year in review;
- (4) number of emergency pesticide applications made during the year;
- (5) non-chemical pest prevention and control measures used; and,
- (6) pest management plan for the coming year.

Section 11. Meetings.

(a) Each local educational agency of a school district shall provide an opportunity, at least once each year, at a regularly scheduled meeting of the county board, for the contact person appointed under section 5 of this Act to receive and address public comments regarding the system.

(b) The notice of the meeting shall be included in the universal notification required at the start of each school year under section 6 of this act.

Section 12. Buffer Zones. Each local educational agency and state pesticide lead agency are encouraged to:

(a) identify sources of pesticides that drift from treated land to school grounds of the educational agency; and

(b) take steps necessary to create an indoor and outdoor school environment that are protected from pesticides described in subsection (a)(1) which may include establishing buffer zones in a 2 mile radius around the school's property during commuting times and while students and school employees may be on school grounds.

Section 13. Antimicrobial Pesticides. The department shall conduct a review of antimicrobial pesticides, as defined in section 2, to determine whether and to what extent they should be subject to the provisions of this chapter.

Section 14. Enforcement.

(a) The (state lead pesticide agency) may adopt and promulgate such regulations as may be necessary for the enforcement of this act. Said department may assess a civil administrative penalty of not more than \$10,000 for each offense against any person or school administration who violates the requirements of this act, or any regulation promulgated under such sections.

(b) Prior to the 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 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.

(c) 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 15. Integrated Pest Management Fund.

(a) There shall be established and set up on the books of the (state) a separate fund to be known as the Integrated Pest Management Fund.

(b) There shall be credited to the fund any penalties collected for violations of this act, and any income derived from the investment of amounts credited to the fund.

(c) Amounts credited to the fund shall be used, subject to appropriation, for the implementation and enforcement of this act to carry out education, training, propagation, and development activities under integrated pest management systems of schools in (state) to remedy the harmful effects of actions taken by the persons that paid the civil penalties.

Section 16. Employee Protection. No local educational agency, school, or person may harass, prosecute, hold liable, or discriminate against any employee or other person because the employee or other person:

(a) is assisting or demonstrating an intent to assist in achieving compliance with this section (including any regulation);

(b) is refusing to violate or assist in the violation of this section (including any regulation); or

(c) has commenced, caused to be commenced, or is about to commence a proceeding, has testified or is about to testify at a proceeding, or has assisted or participated or is about to participate in any manner in such a proceeding or in any other action to carry out this section.

Section. 17. Complaints. Not later than 1 year after an alleged violation occurred, an employee or other person alleging a violation of this act, or another person at the request of the employee, may file a complaint with Director of the (state lead pesticide agency) .

Section 18. Regulations. The Director of the (state lead pesticide agency) shall promulgate such regulations as are necessary to carry out this act.

Section 19. Authorization of Appropriations. There are authorized to be appropriated to carry out this act \$ for each of fiscal years 2001 through 2005.

Section 20. This Act shall take effect (date) .