

HOUSE No. 1745

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act updating the public health laws..

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

1 WHEREAS The Legislature finds that it is the policy of the commonwealth to provide its
2 citizens with laws that protect the public health, as evidenced by its proud history of enacting
3 laws and policies that protect women’s health and allow for the protection of individual rights
4 enumerated in the Massachusetts Declaration of Rights.

5 WHEREAS The Legislature finds that the near-total bans on contraception and abortion
6 and other unenforceable restrictions are antiquated and unconstitutional laws that run contrary to
7 Massachusetts’ strong record on protecting women’s reproductive health. Keeping these
8 outdated statutes in the General Laws flies in the face of the commonwealth’s commitment to
9 women’s health, and any attempts to enforce these laws would pose a grave threat to the public
10 health.

11 WHEREAS The Legislature finds that Massachusetts is one of only four states in the
12 United States where a pre-Roe v. Wade (1973) criminal abortion statute has been neither
13 repealed nor enjoined, despite the fact that legal abortion has protected the health and lives of
14 women in the United States. Prior to the Roe v. Wade decision by the U.S. Supreme Court in

15 1973, an estimated 1,200,000 women each year were forced to resort to illegal abortions, leading
16 to infection, hemorrhage, disfiguration, and death – and unsafe abortion was the leading cause of
17 maternal mortality. Since abortion became legal in the U.S., maternal mortality and morbidity
18 has drastically declined, and deaths and injuries from abortion are now extremely rare.

19 WHEREAS The Legislature finds that a ban on contraception for unmarried persons
20 remains in the General Laws despite having been found unconstitutional by the U.S. Supreme
21 Court in 1972. Contraceptive use and access is critical to being able to avoid unplanned
22 pregnancy, which can have far-reaching consequences for a woman, her family, and society at
23 large. Lack of access to contraception is associated with increased health risks for both mothers
24 and children due to unintended pregnancies and closely spaced births.

25 WHEREAS The Legislature finds that the unenforceable statutory requirement that
26 abortions during or after the thirteenth week of pregnancy be performed only in hospitals duly
27 authorized to provide facilities for general surgery does not serve women’s health and instead
28 creates obstacles that may harm women’s health in the commonwealth. Medical and surgical
29 abortions are extremely safe procedures. In the United States, 90% of abortions are performed in
30 outpatient settings that – while unconnected with hospitals – adhere to stringent medical
31 standards, and fewer than 0.3% of abortion patients have complications requiring hospitalization.
32 Moreover, abortions in hospital settings are considerably more costly, and these facilities are also
33 not significant providers of this care nationally or in Massachusetts. Requiring second-trimester
34 abortions to be performed in hospitals would greatly limit access to these health services, forcing
35 women to delay or forgo their abortions because they cannot find a hospital to provide this
36 medical care and/or are unable to afford the procedure in such a setting.

37 THEREFORE BE IT ENACTED:

38 SECTION 1. Section 12Q of chapter 112 of the General Laws, as appearing in the 2004
39 Official Edition, is hereby amended by striking out the first paragraph and inserting in place
40 thereof the following paragraph: -

41 Except in an emergency requiring immediate action, no abortion may be performed under
42 section 12L or 12M unless the written consent of the proper person has been delivered to the
43 physician performing the abortion as set forth in section 12S.

44 SECTION 2. Section 19 of chapter 272 of the General Laws is hereby repealed.

45 SECTION 3. Section 20 of said chapter 272 is hereby repealed.

46 SECTION 4. Section 21 of said chapter 272 is hereby repealed.

47 SECTION 5. Section 21A of chapter 272 of the General Laws, as appearing in the 2004
48 Official Edition, is hereby amended by striking out in lines 2, 5, and 8 the word “married”.