

HOUSE No. 5179

Section 40 contained in the engrossed Bill making appropriations for the fiscal year 2021 for the maintenance of the departments, boards, commissions, institutions and certain activities of the commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements (see House, No. 5164), which had been returned by His Excellency the Governor with recommendation of amendment (for message, see Attachment C of House, No. 5190).
December 14, 2020.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act providing for access to reproductive health services.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith access to reproductive health services, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health.

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

1 Chapter 112 of the General Laws is hereby amended by striking out sections 12K to 12U,
2 inclusive, as so appearing, and inserting in place thereof the following 8 sections:-

3 Section 12K. As used in sections 12L to 12R, inclusive, the following words shall have
4 the following meanings unless the context clearly requires otherwise:-

5 “Abortion”, any medical treatment intended to induce the termination of, or to terminate,
6 a clinically diagnosable pregnancy except for the purpose of producing a live birth; provided,
7 however, that “abortion” shall not include providing care related to a miscarriage.

8 “Hospital”, an institution as defined in section 52 of chapter 111 and duly licensed
9 pursuant to section 51 of said chapter 111.

10 “Nurse midwife”, a nurse who is designated as a certified nurse midwife by the board of
11 registration in nursing pursuant to section 80B.

12 “Nurse practitioner”, a nurse who is designated as a certified nurse practitioner by the
13 board of registration in nursing pursuant to section 80B.

14 “Physician”, a person registered with the board of registration in medicine to practice
15 medicine within the commonwealth.

16 “Physician assistant”, a person who is a graduate of an approved program for the training
17 of physician assistants and who is supervised by a physician in accordance with sections 9C to
18 9K, inclusive.

19 “Pregnancy”, the presence of an implanted human embryo or fetus in the uterus.

20 Section 12L. The commonwealth, or a subdivision thereof, shall not interfere with a
21 person’s personal decision and ability to prevent, commence, terminate or continue their own
22 pregnancy consistent with this chapter, or restrict the use of medically appropriate methods of
23 abortion or the manner in which medically appropriate abortion is provided.

24 Section 12M. A physician, physician assistant, nurse practitioner or nurse midwife may
25 perform an abortion consistent with the scope of their practice and license if, in their best
26 medical judgment, the pregnancy has existed for less than 24 weeks.

27 Section 12N. If a pregnancy has existed for 24 weeks or more, no abortion may be
28 performed except by a physician and only if it is necessary, in the best medical judgment of the

29 physician, to preserve the life of the patient, if it is necessary, in the best medical judgment of the
30 physician, to preserve the patient's physical or mental health or, in the best medical judgment of
31 the physician, an abortion is warranted because of a lethal fetal anomaly or the fetus is
32 incompatible with sustained life outside the uterus.

33 Section 12O. If an abortion is performed pursuant to section 12N, the facility where the
34 abortion is performed shall maintain life-supporting equipment, as defined by the department of
35 public health, to enable the physician performing the abortion to take appropriate steps, in
36 keeping with good medical practice and consistent with the procedure being used, to preserve the
37 life and health of a live birth and the patient.

38 Section 12P. Except in an emergency requiring immediate action, an abortion shall not
39 be performed under section 12M or section 12N unless the written informed consent of the
40 proper person has been obtained as set forth in section 12R.

41 Except in an emergency requiring immediate action, an abortion shall not be performed
42 under section 12N unless performed in a hospital duly authorized to provide facilities for
43 obstetrical services.

44 Section 12Q. The commissioner of public health shall collect aggregate data on abortions
45 performed by a physician, physician assistant, certified nurse practitioner or certified nurse
46 midwife on a form promulgated by the commissioner that shall include, but not be limited to,
47 the: (i) date and place of the abortions performed; (ii) ages of the pregnant patients; (iii) method
48 used to perform the abortions; and (iv) gestational age when the abortions were performed. The
49 commissioner shall prepare from these forms such statistical tables with respect to maternal
50 health, abortion procedures and gestational age as the commissioner deems useful and shall make

51 an annual report thereof to the general court. Nothing in this section shall limit the authority of
52 the department of public health to require reports pursuant to sections 24A and 25A of chapter
53 111.

54 Section 12R. An abortion shall not be performed without first obtaining the written
55 informed consent of the patient seeking an abortion. The commissioner of public health shall
56 prescribe a form to use in obtaining such consent. A patient seeking an abortion shall sign the
57 consent form in advance of the time for which the abortion is scheduled, except in an emergency
58 requiring immediate action; provided, however, that this requirement shall not impose any
59 waiting period between the signing of the consent form and the patient obtaining the abortion.
60 The patient shall then return it to the physician, physician assistant, nurse practitioner or nurse
61 midwife performing the abortion who shall maintain it in their files and who shall destroy it 7
62 years after the date upon which the abortion is performed.

63 The consent form and any other forms, transcript of evidence or written findings or
64 conclusions of a court shall be confidential and shall not be released to any other person except
65 by the patient's written informed consent or by a proper judicial order, other than to the patient
66 themselves, to whom such documents relate, the physician, physician assistant, nurse practitioner
67 or nurse midwife who performed the abortion or any person whose consent is obtained pursuant
68 to this section or under any other applicable state or federal law. If a patient is less than 16 years
69 of age and has not married, an abortion shall not be performed unless the physician, physician
70 assistant, nurse practitioner or nurse midwife first obtains both the consent of the patient and that
71 of 1 of the patient's parents or guardians, except as hereinafter provided. In deciding whether to
72 grant such consent, a patient's parent or guardian shall consider only the patient's best interests.
73 If a patient less than 16 years of age has not married and if the patient is unable to obtain the

74 consent of 1 of their parents or 1 of their guardians to the performance of an abortion, or if they
75 elect not to seek the consent of a parent or a guardian, or in the case of incest, a judge of the
76 superior court department of the trial court of the commonwealth shall, upon petition or motion,
77 and after an appropriate hearing held in person or via teleconference at the patient's option,
78 authorize a physician, physician assistant, nurse practitioner or nurse midwife to perform the
79 abortion if the judge determines that the patient is mature and capable of giving informed
80 consent to the procedure or, if the judge determines that the patient is not mature, that
81 performance of an abortion would be in the patient's best interests. A patient less than 16 years
82 of age may participate in proceedings in the superior court department of the trial court on their
83 own behalf and the court may appoint a guardian ad litem for the patient. The court shall,
84 however, advise the patient that they have a right to court appointed counsel and shall, upon the
85 patient's request, provide the patient with such appointed counsel. Proceedings in the superior
86 court department of the trial court under this section shall be confidential and shall be given such
87 precedence over other pending matters that the court may reach a decision promptly and without
88 delay so as to serve the best interests of the patient. The chief justice of the superior court
89 department of the trial court shall establish procedures for conducting proceedings under this
90 section promptly and without delay including, but not limited to, procedures to accommodate the
91 patient outside of normal court hours. A judge of the superior court department of the trial court
92 who conducts proceedings under this section shall make in writing specific factual findings and
93 legal conclusions supporting their decision and shall order a record of the evidence to be
94 maintained including the findings and conclusions. Exclusive jurisdiction over appeals of a
95 denial by the superior court of authorization for a patient to obtain an abortion is hereby
96 conferred on the supreme judicial court or a single justice thereof. Notwithstanding section 12F,

- 97 a patient may provide consent and consent shall be granted under subparagraphs (ii) to (vi),
98 inclusive, of said section 12F for abortion if the minor is not less than 16 years of age.