

HOUSE No. 4096

The Commonwealth of Massachusetts

PRESENTED BY:

Paul J. Donato and Rebecca L. Rausch

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 promoting community immunity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Paul J. Donato</i>	<i>35th Middlesex</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Maria Duaiame Robinson</i>	<i>6th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>

HOUSE No. 4096

By Representative Donato of Medford and Senator Rausch, a joint petition (subject to Joint Rule 12) of Paul J. Donato, Rebecca L. Rausch and others for legislation to establish an immunization program within the Department of Public Health for certain child care centers, schools, camps and institutions of higher education. Public Health.

The Commonwealth of Massachusetts

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

An Act promoting community immunity.

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. Chapter 76 of the General Laws is hereby amended by striking out section
2 15, as appearing in the 2018 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 15. All schools shall comply with the requirements set forth in section 238 of
5 chapter 111.

6 SECTION 2. Said chapter 76 is hereby further amended by striking out section 15C, as so
7 appearing, and inserting in place thereof the following section:-

8 Section 15C. All institutions of higher learning shall comply with the requirements
9 established in sections 238 of chapter 111.

10 SECTION 3. Section 15D of said chapter 76 is hereby repealed.

11 SECTION 4. Section 24N of chapter 111 of the General Laws, as appearing in the 2018
12 Official Edition, is hereby amended by inserting after the word “24M”, in line 32, the following
13 words:- , and to administer the Community Immunity Act, established in section 238.

14 SECTION 5. Said chapter 111 is hereby further amended by adding the following
15 section:-

16 Section 238. (a) This section shall be known and may be cited as the Community
17 Immunity Act.

18 (b) As used in this section, the following words shall have the following meanings unless
19 the context clearly requires otherwise:-

20 “Covered program”, (i) a child care center, as defined in section 1A of chapter 15D; (ii) a
21 school, whether public, private or charter, that provides education to students in any combination
22 of grade levels from kindergarten to grade 12, inclusive, and including, but not limited to, any
23 school activity open to children who are home schooled; (iii) a recreational camp; or (iv) an
24 institution of higher education, whether public or private.

25 “Department”, the department of public health.

26 “Exemption”, written authorization from the department for a participant to be excused
27 from the schedule.

28 “Herd immunity”, population-wide resistance to the spread of an infectious disease
29 within that population, resulting from a sufficient percentage of people receiving one or more
30 immunizations against the disease.

31 “Immunization”, an inoculation administered for the purpose of making a person resistant
32 to an infectious disease.

33 “Participant”, a person who engages in 1 or more activities of a covered program through
34 enrollment or other registration process.

35 “Provider”, a health care provider licensed by an agency, board or division of the
36 commonwealth who, acting within their scope of practice, may lawfully administer an
37 immunization.

38 “Responsible adult”, a parent or legal guardian of a participant, a participant who is an
39 emancipated minor or a participant who has achieved the age of majority.

40 “Schedule”, the immunization administration schedule established by the department and
41 consistent with generally accepted medical practice.

42 (c) No covered program shall enroll a participant whose records do not include: (i)
43 documentation of immunizations in accordance with the schedule; (ii) an exemption approval
44 letter issued by the department, consistent with subsections (d) to (l), inclusive; (iii) evidence that
45 the participant is in the process of obtaining immunizations with the objective of compliance
46 with the schedule; (iv) for public schools only, evidence that the participant moved into the
47 commonwealth not more than 90 days before the date of enrollment and the responsible adult is
48 making a good faith effort to obtain the necessary immunization documentation or exemption
49 approval; or (v) evidence that more than 60 days have elapsed since a responsible adult applied
50 to the department for an exemption and the department has not responded.

51 (d) The two types of immunization exemptions shall be: (i) medical, for a participant
52 whose medical conditions or circumstances preclude the administration of immunizations, as
53 determined in the best medical judgment of a provider; provided, however, that medical
54 judgment may include, but shall not be limited to, immunization contraindications or guidelines
55 established by the Centers for Disease Control and Prevention; and (ii) religious, for a participant
56 who holds, or whose family holds, sincere religious beliefs prohibiting immunizations. There
57 shall be no other type of exemption.

58 (e) The department shall prepare separate standardized exemption application forms for
59 medical and religious exemptions. The department shall make the forms available to the public
60 online and, as necessary, in hard copy; provided, however, that no covered program shall provide
61 a form, whether in hard copy or electronically, to a responsible adult or a participant absent a
62 specific request for a form from the responsible adult.

63 (f) The department shall include in the medical exemption application form the following
64 required elements: (i) a statement of the medical condition or conditions substantiating the
65 exemption, including a checklist of generally accepted contraindications to immunizations;
66 provided, however, that the checklist shall contain an “other” category wherein a provider may
67 describe 1 or more conditions within the totality of the participant’s medical circumstances; and
68 provided further, that the medical conditions section shall be completed by a provider; (ii) a
69 statement that the provider has an established primary care provider-patient relationship with the
70 participant; (iii) the signature of the provider; (iv) a unique government-issued professional
71 identification number assigned to the provider; (v) the signature of the responsible adult; and (vi)
72 dates for all signatures.

73 (g) The department shall include in the religious exemption application form the
74 following required elements: (i) statements that: (a) the participant or responsible adult has a
75 sincere religious belief prohibiting immunizations; (b) refusing to immunize the participant may
76 result in serious illness or death of the participant; and (c) refusing to immunize the participant is
77 against public health policy and may result in serious illness or death of others; (ii) a certification
78 that the responsible adult has provided a complete and accurate copy of the religious exemption
79 application to the participant's primary health care provider, including the name and contact
80 information for the primary health care provider; and (iii) the dated signature of a provider on the
81 participant's primary health care team, indicating receipt of a copy of the exemption application
82 form only. DPH may provide requirements as alternatives to elements (ii) and (iii) of this
83 subsection in the event a participant does not have a primary health care provider.

84 (h) The department may add additional elements to the exemption application forms
85 described in subsections (f) and (g).

86 (i) A responsible adult must submit a completed exemption application to the department
87 for review. The department shall determine the method of submission, be it electronic, hard
88 copy, or both.

89 (j) The department shall have the exclusive authority to approve or deny exemption
90 applications. The department shall deny all applications submitted in a form other than the forms
91 described in subsections (f) and (g). For religious exemption applications, the department shall
92 approve all validly and accurately completed religious exemption application forms. For medical
93 exemption applications, the department shall approve all validly and accurately completed
94 medical exemption applications; provided, however, that a generally accepted contraindication is

95 the medical condition justifying the exemption. If another medical condition or set of conditions
96 is provided as justification for the exemption, the department may approve or deny the
97 exemption application based on a review by an expert licensed provider of the stated
98 justification, or request more information about the participant's medical history in order to make
99 its determination.

100 (k) The department shall issue a letter to each applicant setting forth the department's
101 determination to approve or deny the exemption application. Whenever practicable, the
102 department shall issue a determination letter not more than 60 days after receipt of the
103 application. For approved applications, the determination letter shall include the final signature
104 date of the application or the expiration date of the approval pursuant to subsection (l) or both
105 dates. For denied applications, the determination letter shall include the reason or reasons for the
106 denial. The department shall establish a process for appeal or reconsideration for applicants who
107 are denied.

108 (l) An exemption approved by the department shall be valid for a period of not more than
109 1 year from the final signature date of the application. The department may, in its sole discretion,
110 require covered programs to exclude exempted participants during a declared public health
111 emergency.

112 (m) A private covered program may implement immunization requirements more
113 stringent than those set forth in this section; provided, however, that the program creates and
114 maintains a written immunization policy, which shall be made available to all responsible adults.

115 (n) A minor may request and consent to preventive care when, in a provider's best
116 medical judgment, the minor is mature and capable of providing informed consent or if

117 performance of the preventive care would be in the minor’s best interest. A provider shall not be
118 subject to regulatory disciplinary action or liable for civil damages or subject to a criminal
119 penalty for a decision under this subsection. All information and records kept in connection with
120 the medical care of a minor who consents to treatment pursuant to this section shall be
121 confidential and shall not be released except upon the written consent of the minor or proper
122 judicial order.

123 (o) All covered programs shall annually report total numbers of immunizations and
124 exemptions data, delineated by exemption type, as applicable, to the department and publish the
125 data to all responsible adults. The department shall designate the methodology for reporting.
126 Publication may be electronic or in hard copy. Publication shall not be required if it would result
127 in disclosure of personally identifying information, as defined in chapter 93H, or otherwise
128 violate applicable privacy laws.

129 (p) The department shall annually publish immunizations and exemptions data,
130 delineated by exemption type, as applicable, for each covered program and school district. The
131 department may also publish data by municipality, county, or other geographic designation, or
132 otherwise in its discretion. Publication shall be electronic and may also be in hard copy.
133 Publication shall not be required whenever doing so would result in disclosure of personally
134 identifying information, as defined in chapter 93H, or otherwise violate applicable privacy laws.

135 (q) Any covered program that has not achieved herd immunity shall be designated as an
136 elevated risk program. Any covered program that fails to report immunization and exemption
137 rates consistent with this section shall be designated an elevated risk program. Elevated risk

138 program designations shall remain in place for not less than 12 months or for whatever longer
139 period may be necessary to improve immunization rates as determined by the department.

140 (r) The department shall maintain a public, online list of elevated risk programs.

141 (s) The department shall create a notice to responsible adults about an elevated risk
142 designation. An elevated risk program shall issue the notice to all responsible adults for
143 participants or those seeking enrollment in the program during the period in which the
144 designation is in place not more than 10 days after receiving an elevated risk program
145 designation. All elevated risk programs shall organize and invite all responsible adults to a
146 presentation by the department about immunization safety, immunization efficacy and herd
147 immunity. The presentation shall be conducted not more than 45 days after the designation is
148 received.

149 (t) The department shall develop and make available online an informational pamphlet
150 about immunization safety, immunization efficacy and herd immunity. The department shall
151 distribute the informational pamphlet, either electronically or in hard copy, to every responsible
152 adult who submits an exemption application pursuant to this section. All elevated risk programs
153 shall distribute the informational pamphlet, either electronically or in hard copy, to all
154 responsible adults for participants or those seeking enrollment in the program during the period
155 in which the designation is in place.

156 (u) The department shall promulgate regulations to administer, implement, and enforce
157 the act, including but not limited to establishing herd immunity rates consistent with established
158 medical practice and public health research.

159 SECTION 6. Section 12F of chapter 112 of the general laws, as appearing in the 2018
160 Official Edition, is hereby amended by striking out, in lines 14 and 15, the words “have come in
161 contact with” and inserting in place thereof the following words:- be at risk of contracting.

162 SECTION 7. Said section 12F of said chapter 112, as so appearing, is hereby further
163 amended by inserting after the word “diagnosis”, in line 18, the following word:- , prevention.

164 SECTION 8. This act shall take effect on July 1, 2020.