

REPUBLIC OF SOUTH AFRICA

TERMINATION OF PREGNANCY BILL

(As introduced)

(MINISTER OF HEALTH)

[B 80-96]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE BEEINDIGING VAN SWANGERSKAP

(Soos ingedien)

(MINISTER VAN GESONDHEID)

[W 80-96] ISBN 0 621 17194 8

BILL

To determine the circumstances in which and conditions under which the pregnancy of a woman may be terminated; and to provide for matters connected therewith .

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Definitions

1. In this Act, unless the context otherwise indicates-

(i) "Director-General" means the Director-General of Health; (iii)

(ii) "gestation period" means the period of pregnancy of a woman calculated from the first day of the menstrual period which in relation to the pregnancy is the last; (iv)

(iii) "incest" means carnal intercourse between two persons who are related to each other in a degree which precludes a lawful marriage between them; (ii)

(iv) "medical practitioner" means a person registered as such under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974); (v)

(v) "Minister" means the Minister of Health; (ix)

- (vi) "minor" means any female person under the age of 18 years; (viii)
- (vii) "prescribe" means prescribe by regulation under section 11; (xi)
- (viii) "registered midwife" means a person registered as such under the Nursing Act, 1978 (Act No. 50 of 1978); (vi)
- (ix) "social worker" means a person registered as such under the Social Work Act, 1978 (Act No. 110 of 1978); (vii) 2a
- (x) "termination of pregnancy" means the separation and expulsion, by medical or surgical means of the contents of the uterus of a pregnant woman; (i)
- (xi) "unlawful carnal intercourse" means rape or incest; (x)
- (xii) "woman" means any female person of any age. (xii)

Circumstances in which and conditions under which pregnancy may be terminated

2. (1) A pregnancy may be terminated-

- (a) during the first 12 weeks of the gestation period of a woman who so requests;
- (b) from the 13th up to and including the 20th week of the gestation period if a medical practitioner, after consultation with another medical practitioner or a registered midwife-

(i) is of the opinion that-

(aa) the continued pregnancy would be a risk of injury to the woman's physical or mental health; or

(bb) there exists a substantial risk that the fetus would suffer from a severe physical or mental abnormality; or

(ii) is advised by a social worker that-

(aa) the pregnancy resulted from unlawful carnal intercourse;

(bb) the pregnancy resulted from an act of sexual abuse; or

(cc) the continued pregnancy would severely affect the social or economic circumstances of the woman;

(c) after the 20th week of the gestation period if a medical practitioner, after consultation with another medical practitioner or a registered midwife, is of the opinion that the continued pregnancy-

(i) would endanger the woman's life; or

(ii) would result in a severe malformation of the fetus.

(2) The termination of a pregnancy may take place only with the consent of the pregnant woman, unless she is incapable of giving consent.

(3) The termination of a pregnancy may only be carried out by a medical practitioner, except for a pregnancy referred to in subsection (1)(a), which may also be carried out by a registered midwife who has completed the prescribed training course.

Place where surgical termination of pregnancy may take place

3. (1) The surgical termination of a pregnancy may take place only at a facility designated by the Minister by notice in the *Gazette* for that purpose under subsection (2).

(2) The Minister may designate any facility for the purpose contemplated in subsection (1), subject to such conditions and requirements as he or she may consider necessary or expedient for achieving the objects of this Act.

(3) The Minister may withdraw any designation under subsection (1) after giving 14 days' prior notice of such withdrawal in the *Gazette*.

Information to person in charge of facility

4. The person in charge of a facility referred to in section 3 or a person designated for such purpose, shall be informed as prescribed of every termination of a pregnancy carried out in that facility.

Scale of benefits

5. The procedure for the surgical termination of a pregnancy shall be on the same scale of benefits as other surgical procedures.

Counselling

6. The prescribed counselling shall be provided or facilitated by the State before and after the termination of a pregnancy.

Consent

7. (1) Notwithstanding any other law or the common law, no consent other than that of the pregnant woman, unless she is incapable of giving consent, shall be required for the termination of a pregnancy.

(2) In the case of a pregnant minor, a medical practitioner or a registered midwife, as the case may be, shall advise such minor to consult with her parents, guardian, family members or friends before the pregnancy is terminated: Provided that the termination of the pregnancy shall not be denied because such minor chooses not to consult them.

Conscientious objection to participation in termination of pregnancy

8. (1) Subject to subsection (2), no person shall be under any legal duty, whether by contract or by any statutory or other legal requirement, to participate in the termination of a pregnancy if he or she has a conscientious objection to the termination of the pregnancy.

(2) Subsection (1) shall not affect any duty to participate in treatment which is necessary to save the life of the woman, to prevent serious injury to her health or to alleviate her pain.

(3) Any person having an objection referred to in subsection (1), shall forthwith refer a woman who requests the termination of her pregnancy to another medical practitioner or registered midwife, as the case may be.

Notification and keeping of records

9. (1) Any medical practitioner, or registered midwife who has completed the prescribed training course, who terminates a pregnancy shall give notice thereof in the prescribed manner and record the prescribed information in the prescribed manner.

(2) The information referred to in subsection (1) shall remain confidential.

(3) The person in charge of a facility referred to in section 3, shall, within one month of the termination of a pregnancy at such facility, collate the prescribed information and forward it by registered post confidentially to the Director-General.

(4) The Director-General shall keep record of the prescribed information which he or she receives in terms of subsection (3).

Delegation

10. (1) The Minister may, on such conditions as he or she may determine, in writing delegate to the Director-General or any other officer in the service of the State, any power conferred upon the Minister by or under this Act, except the power referred to in section 11.

(2) The Director-General may, on such conditions as he or she may determine, in writing delegate to an officer in the service of the State, any power conferred upon the Director-General by or under this Act or delegated to him or her under subsection (1).

(3) The Minister or Director-General shall not be divested of any power delegated by him or her, and may amend or set aside any decision taken by a person in the exercise of any such power delegated to him or her.

Regulations

11. The Minister may make regulations relating to any matter which he or she may consider necessary or expedient to prescribe for achieving the objects of this Act.

Offences and penalties

12. Any person who-

- a. is not a medical practitioner and who procures the termination of a pregnancy;
- b. is not a registered midwife who has completed the prescribed training course, and who procures the termination of a pregnancy referred to in section 2(1)(b) 35 or (c);
- c. is not a social worker and who gives advice contemplated in section 2(1)(b)(ii) regarding the termination of a pregnancy;
- d. subject to section 8, prevents the lawful termination of a pregnancy or obstructs access to a facility for the termination of a pregnancy;
- e. compel another person against his or her will to participate in the termination of a pregnancy to which he or she has a conscientious objection; or
- f. contravenes or fails to comply with any provision of section 9(1) or (3), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years.

Application of Act

13. This Act shall apply to the whole of the national territory of the Republic, and this Act and any regulation made thereunder shall replace any law relating to the termination of pregnancy which applied in the territory of any entity which prior to the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), possessed legislative authority with regard to the termination of a pregnancy.

Short title and commencement

14. This Act shall be called the Termination of Pregnancy Act, 1996, and shall come 5 into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE TERMINATION OF PREGNANCY BILL, 1996

1. The Bill's primary object is to provide for the termination of a pregnancy on request up to and including the 12th week of pregnancy and thereafter, in certain circumstances.
2. The Bill provides in clause 2 for a pregnancy to be terminated up to and including the first 12 weeks of pregnancy at the request of the pregnant woman. It is proposed that a medical practitioner or a registered midwife who has undergone the prescribed training be permitted to terminate a pregnancy in this period. After the first 12 weeks of pregnancy, it is proposed that only a medical practitioner be permitted to terminate a pregnancy because of the complicated procedures involved.

2.1

The Bill provides that a pregnancy may be terminated after the first 12 weeks of pregnancy up to and including the 20th week of pregnancy if a medical practitioner, after consultation with another medical practitioner or a registered midwife-

(a) is of the opinion that-

- i. the continued pregnancy would be a risk of injury to the woman's physical or mental health; or
- ii. there exists a substantial risk that the fetus would suffer from a severe physical or mental abnormality; or

(b) is advised by a social worker that-

- i. the pregnancy resulted from unlawful carnal intercourse;
- ii. the pregnancy resulted from an act of sexual abuse; or (iii) the continued pregnancy would severely affect the social or economic circumstances of the woman.

2.2

The Bill also provides that a pregnancy may be terminated after the 20th week of pregnancy if a medical practitioner, after consultation with another medical practitioner or a registered midwife, is of the opinion that-

1. the continued pregnancy would endanger the woman's life; or
2. the continued pregnancy would severely malform the fetus.

3. The Bill provides for the Minister to designate the facilities in which pregnancies may be surgically terminated and if the Minister withdraws the designation he or she must give prior notice to that effect.
4. The person in charge of a designated facility shall be informed in the prescribed manner of every termination of a pregnancy carried out in that facility.
5. The procedure for the surgical termination of a pregnancy shall be on the same

- scale of benefits as other surgical procedures.
6. The Bill provides for counselling before and after a pregnancy is terminated.
 7. It is proposed in clause 7 that only the consent of the woman concerned is required for the termination of a pregnancy. It is also proposed that a minor should be advised to consult her parents, guardian, family members or friends before a pregnancy is terminated, but that the termination of the pregnancy should not be denied if such minor chooses not to consult them.
 8. It is proposed in clause 8 that no person is under any legal duty to participate in the termination of a pregnancy if he or she has a conscientious objection to the termination of the pregnancy. However, subclause (3) seeks to make it compulsory for such person to refer the woman to another medical practitioner or a registered midwife. It is also proposed that a person will still have a duty to participate in treatment which is necessary to save the life of a woman, to prevent serious injury to her health or to alleviate her pain.
 9. The Bill provides for a medical practitioner or registered midwife who terminates a pregnancy to give notice thereof in the prescribed manner and to record certain information. The person in charge of a facility where a pregnancy is surgically terminated shall also collate the information referred to in subclause (1) and forward it by registered post confidentially to the Director-General, who is obliged to keep record of such information.
 10. The Minister may delegate certain powers to the Director-General and the Director-General may also delegate certain powers to an officer in the services of the State. The Minister or Director-General may amend or set aside any decision taken by a person in the exercise of such power delegated to him or her.
 11. The Minister may make regulations relating to any matter he or she may consider necessary or expedient to prescribe for achieving the objects of this Act.
 12. Clause 12 provides inter alia that no person may procure, give advice to regarding, prevent or fail to notify on the termination of a pregnancy in contravention of this Act. A contravention of this Act shall be an offence punishable with a fine or to imprisonment for a period not exceeding 10 years.
 13. Clause 13 provides that existing legislation regarding the termination of a pregnancy be replaced by this Act.

The Bill has not been published for comment.