

REPUBLIC OF SOUTH AFRICA

**CHOICE ON
TERMINATION OF PREGNANCY
AMENDMENT BILL**

*(As amended by the Portfolio Committee on Health)
(The English text is the official text of the Bill)*

[B 21B—2007]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Choice on Termination of Pregnancy Act, 1996, so as to amend a definition and to insert others; to empower a Member of the Executive Council to approve facilities where a termination of pregnancy may take place; to exempt a facility offering a 24-hour maternity service from having to obtain approval for termination of pregnancy services under certain circumstances; to provide for the recording of information and the submission of statistics; to enable a Member of the Executive Council to make regulations; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 92 of 1996

1. Section 1 of the Choice on Termination of Pregnancy Act, 1996 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion after the definition of “**gestation period**” of the following definition:

“**Head of Department**’ means the head of a provincial health department;”;

(b) by the insertion after the definition of “**medical practitioner**” of the following definition: 10

“**Member of the Executive Council**’ means the member of the Executive Council of a province who is responsible for health in that province;”;

(c) by the substitution for the definition of “**registered midwife**” of the following definition: 15

“**registered midwife**’ means a person registered as such under the Nursing Act, 2005 (Act No. 33 of 2005), and who has in addition undergone prescribed training in terms of this Act;” and

(d) by the insertion after the definition of “**registered midwife**” of the following definition: 20

“**registered nurse**’ means a person registered as such under the Nursing Act, 2005 (Act No. 33 of 2005), and who has in addition undergone prescribed training in terms of this Act;”.

Substitution of section 3 of Act 92 of 1996

2. The following section is hereby substituted for section 3 of the principal Act:

“Place where termination of pregnancy may take place

3. (1) Termination of a pregnancy may take place only at a facility which— 5
- (a) gives access to medical and nursing staff;
 - (b) gives access to an operating theatre;
 - (c) has appropriate surgical equipment;
 - (d) supplies drugs for intravenous and intramuscular injection;
 - (e) has emergency resuscitation equipment and access to an emergency referral centre or facility; 10
 - (f) gives access to appropriate transport should the need arise for emergency transfer;
 - (g) has facilities and equipment for clinical observation and access to in-patient facilities; 15
 - (h) has appropriate infection control measures;
 - (i) gives access to safe waste disposal infrastructure;
 - (j) has telephonic means of communication; and
 - (k) has been approved by the Member of the Executive Council by notice in the *Gazette*. 20
- (2) The Member of the Executive Council may withdraw any approval granted in terms of subsection (1)(k).
- (3) (a) Any health facility that has a 24-hour maternity service, and which complies with the requirements referred to in subsection (1)(a) to (j), may terminate pregnancies of up to and including 12 weeks without having to obtain the approval of the Member of the Executive Council. 25
- (b) The person in charge of a health facility contemplated in paragraph (a) must notify the relevant Member of the Executive Council that the health facility has a 24-hour maternity service which complies with the requirements referred to in subsection (1)(a) to (j). 30
- (4) The Member of the Executive Council shall once a year submit statistics of any approved facilities for that year to the Minister.
- (5) Notwithstanding anything to the contrary in this Act, the Minister may perform any of the functions that the Member of the Executive Council may or must perform, if it is necessary to perform such function in order to achieve any of the objects of this Act.”. 35

Amendment of section 7 of Act 92 of 1996

3. Section 7 of the principal Act is hereby amended—
- (a) by the substitution in subsection (3) for the words preceding the proviso of the following words: 40

“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]** relevant Head of Department”; and
 - (b) by the substitution for subsection (4) of the following subsection: 45

“(4) The **[Director-General]** Head of Department shall—

 - (a) keep record of the prescribed information which he or she receives in terms of subsection (3); and
 - (b) submit to the Director-General the information contemplated in paragraph (a) every six months.”. 50

Substitution of section 8 of Act 92 of 1996

4. The following section is hereby substituted for section 8 of the principal Act:

“Delegation

8. (1) The **[Minister]** Member of the Executive Council may, on such conditions as he or she may determine, in writing delegate to the **[Director-General]** Head of Department or any other officer in the service of the State, any power conferred upon the **[Minister]** Member of the Executive Council by or under this Act, except the power referred to in section 9. 5

(2) The **[Director-General]** Head of Department 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]** Head of Department by or under this Act **[or delegated to him or her under subsection (1)]**. 10

(3) The **[Minister or Director-General]** Member of the Executive Council or Head of Department 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]** that person.”. 15

Substitution of section 9 of Act 92 of 1996

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5. The following section is hereby substituted for section 9 of the principal Act:

“Regulations

9. The **[Minister]** Member of the Executive Council may, in consultation with the Minister, make regulations relating to any matter which **[he or she may consider]** it is necessary or expedient to prescribe for **[achieving the objects]** the proper implementation or administration of this Act.”. 25

Amendment of section 10 of Act 92 of 1996

6. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Any person who— 30
- (a) is not a medical practitioner, or a registered midwife or registered nurse who has completed the prescribed training course, and who performs the termination of a pregnancy referred to in section 2(1)(a); 30
 - (b) is not a medical practitioner and who performs the termination of a pregnancy referred to in section 2(1)(b) or (c); **[or]** 35
 - (c) prevents the lawful termination of a pregnancy or obstructs access to a facility for the termination of a pregnancy; or
 - (d) terminates a pregnancy or allows the termination of a pregnancy at a facility not approved in terms of section 3(1) or not contemplated in section 3(3)(a), 40
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years.”. 40

Substitution of certain expression in Act 92 of 1996

7. The principal Act is hereby amended by the substitution for the expression “registered midwife”, wherever it appears, of the expression “registered midwife or registered nurse, except in the circumstances contemplated in section 2(1)(c)”. 45

Transitional provision

8. Any facility designated in terms of section 3(1) of the principal Act prior to the commencement of this Act must be regarded as having been approved by the Member of the Executive Council in terms of section 3(1)(k) of the principal Act as amended by this Act.

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Short title

9. This Act is called the Choice on Termination of Pregnancy Amendment Act, 2007.

MEMORANDUM ON THE OBJECTS OF THE CHOICE ON TERMINATION OF PREGNANCY AMENDMENT BILL

1. BACKGROUND

On 8 and 14 June 2007 the National Council of Provinces and the National Assembly, respectively, passed resolutions which—

- (a) noted that—
 - (i) on 18 August 2006 the Constitutional Court declared the *Choice on Termination of Pregnancy Amendment Act* (Act No. 38 of 2004) invalid, and that the order of invalidity is suspended for a period of 18 months to enable Parliament to re-enact the statute in a manner that is consistent with the Constitution;
 - (ii) the 18-month suspension period expires on 16 February 2008; and
 - (iii) the Rules do not provide specifically for Parliament to deal with legislation that has been declared invalid;
- (b) resolved that—
 - (i) the above-mentioned statute be re-enacted, in compliance with the court order;
 - (ii) the legislation be deemed introduced in the National Council of Provinces, as the First House;
 - (iii) the Act, as it now exists, be deemed as the text before Parliament, as extensive work has been done during Parliament's previous consideration of the legislation; and
- (c) resolved and noted, respectively, that the Select Committee on Social Services be put in charge of the Bills before the Council.

2. OBJECTS OF BILL

The objects of the Bill are to—

- (a) allow registered midwives and registered nurses, who have undergone the prescribed training, to perform terminations of pregnancy;
- (b) do away with the designation by the Minister of facilities where termination of pregnancy may take place, which is a lengthy process, and to empower the Member of the Executive Council of a province responsible for health in that province to approve those facilities;
- (c) allow all public and private facilities that have a 24-hour maternity service to terminate pregnancies of up to and including 12 weeks without seeking approval from the Member of the Executive Council concerned;
- (d) empower the Member of the Executive Council concerned to prescribe by regulation the requirements and conditions applicable to facilities where termination of pregnancies may take place; (For the purposes of consistency, the Minister must approve the regulations before they are implemented.)
- (e) require the Member of the Executive Council concerned to report annually on the number of facilities approved by him or her;
- (f) require the relevant heads of provincial departments to submit certain prescribed information to the Director-General of Health; and
- (g) make it an offence for any person to terminate a pregnancy unlawfully or allow a termination of a pregnancy at a facility which has not been approved.

3. FINANCIAL IMPLICATIONS FOR STATE

The Department of Health has advised that save for the expected increase of applications for termination of pregnancy, which will lead to a slight increase of individual hospital budgets, major financial implications are not expected. The costs involved should be covered by the general budget allocation to the facilities.

4. PARLIAMENTARY PROCEDURE

- (a) The Parliamentary Legal Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely "Health services".

- (b) The Parliamentary Legal Advisers are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.