

ABORTION AND STERILIZATION ACT NO. 2 OF 1975

[ASSENTED TO 28 FEBRUARY, 1975]

[DATE OF COMMENCEMENT: 12 MARCH, 1975]

(English text signed by the State President)

This Act has been updated to *Government Gazette* 17602 dated 22 November, 1996.

as amended by

Abortion and Sterilization Amendment Act, No. 18 of 1976

Abortion and Sterilization Amendment Act, No. 38 of 1980

Abortion and Sterilization Amendment Act, No. 48 of 1982

Abolition of Racially Based Land Measures Act, No. 108 of 1991

[with effect from 1 April, 1992—see title LAND]

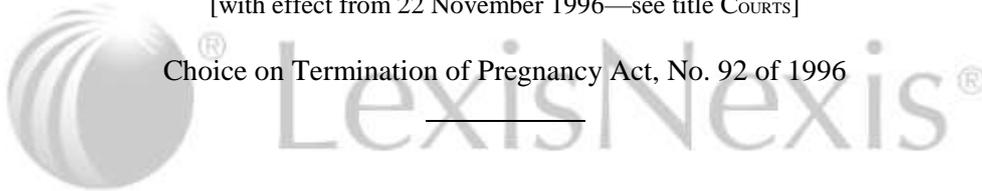
General Law Amendment Act, No. 49 of 1996

[with effect from 4 October 1996—see title GENERAL LAW AMENDMENT ACTS]

Abolition of Restrictions on the Jurisdiction of Courts Act, No. 88 of 1996

[with effect from 22 November 1996—see title COURTS]

Choice on Termination of Pregnancy Act, No. 92 of 1996



GENERAL NOTE

In so far as it relates to abortion, this Act has been repealed by s. 11 (2) (a) of Act No. 92 of 1996.

ACT

To define the circumstances in which an abortion may be procured on a woman or in which a person who is incapable of consenting or incompetent to consent to sterilization, may be sterilized; and to provide for incidental matters.

ARRANGEMENT OF SECTIONS

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1. Definitions.—In this Act, unless the context otherwise indicates—

“**abortion**” means the abortion of a live foetus of a woman with intent to kill such foetus;

“**Director-General**” means the Director-General: Health and Welfare;
[Definition of “Director-General” inserted by s. 1 (a) of Act No. 48 of 1982.]

“**incest**” means carnal intercourse between two persons who are related to each other and by reason of such relationship incompetent to marry each other;

“**magistrate**” includes an additional and an assistant magistrate;

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

“**Minister**” means the Minister of Health and Welfare;
[Definition of “Minister” substituted by s. 1 (b) of Act No. 48 of 1982.]

“**prescribed**” means prescribed by regulation made under this Act;

“**psychiatrist**” means a person registered as such under the Medical, Dental and Supplementary Health Service Professions Act, 1974;

“**State-controlled institution**” means a hospital conducted by the State (including a provincial administration), and such part of any other institution, other than such a hospital, as may be hired and controlled by a provincial administration;
[Definition of “State-controlled institution” substituted by s. 35 of Act No. 108 of 1991.]

“**sterilization**” means a surgical operation performed for the purpose of making the person on whom it is performed incapable of procreation, but does not include the removal of any gonad;
[Definition of “sterilization” substituted by s. 1 (c) of Act No. 48 of 1982.]

“**unlawful carnal intercourse**” means rape and incest.
[Definition of “unlawful carnal intercourse” substituted by s. 1 (d) of Act No. 48 of 1982.]

2. Prohibition of abortion.—No person shall procure an abortion otherwise than in accordance with the provisions of this Act.

3. Circumstances in which abortion may be procured.—(1) Abortion may be procured by a medical practitioner only, and then only—

- (a) where the continued pregnancy endangers the life of the woman concerned or constitutes a serious threat to her physical health, and two other medical practitioners have certified in writing that, in their opinion, the continued pregnancy so endangers the life of the woman concerned or so constitutes a serious threat to her physical health and abortion is necessary to ensure the life or physical health of the woman;

- (b) where the continued pregnancy constitutes a serious threat to the mental health of the woman concerned, and two other medical practitioners have certified in writing that, in their opinion, the continued pregnancy creates the danger of permanent damage to the woman's mental health and abortion is necessary to ensure the mental health of the woman;
- (c) where there exists a serious risk that the child to be born will suffer from a physical or mental defect of such a nature that he will be irreparably seriously handicapped, and two other medical practitioners have certified in writing that, in their opinion, there exists, on scientific grounds, such a risk; or
- (d) where the foetus is alleged to have been conceived in consequence of unlawful carnal intercourse, and two other medical practitioners have certified in writing after such interrogation of the woman concerned as they or any of them may have considered necessary, that in their opinion the pregnancy is due to the alleged unlawful carnal intercourse; or
[Para. (d) substituted by s. 2 (b) of Act No. 48 of 1982.]
- (e) where the foetus has been conceived in consequence of illegitimate carnal intercourse, and two other medical practitioners have certified in writing that the woman concerned is due to a permanent mental handicap or defect unable to comprehend the consequential implications of or bear the parental responsibility for the fruit of coitus.
[Para. (e) added by s. 2 (c) of Act No. 48 of 1982.]

(2) (a) A medical practitioner who has issued a certificate referred to in subsection (1) shall in no way participate in or assist with the abortion in question, and such a certificate, or such certificates issued for the same purpose, shall not be valid if issued by members of the same partnership or by persons in the employ of the same employer.

(b) The provisions of paragraph (a) shall not apply to the performance by any person of his functions in the service of the State.

(3) At least one of the two medical practitioners referred to in subsection (1)—

- (a) shall have practised as a medical practitioner for four years or more since the date of his registration as a medical practitioner in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);
- (b) shall be a psychiatrist employed by the State, if the abortion is to be procured by virtue of the provisions of subsection (1) (b);
- (c) shall be the district surgeon who examined the woman concerned if a complaint regarding the alleged unlawful carnal intercourse has been lodged with the Police, and the foetus is alleged to have been conceived in consequence of such unlawful carnal intercourse.

[Para. (c) substituted by s. 2 (d) of Act No. 48 of 1982.]

4. Sterilization of persons incapable of consenting thereto.—(1) A sterilization shall not be performed on any person who for any reason is incapable of consenting or incompetent to consent thereto, unless—

- (a) two medical practitioners, of whom one shall be a psychiatrist, have certified in writing that the person concerned—
 - (i) is suffering from a hereditary condition of such a nature that if he or she were to procreate a child, such child would suffer from a physical

or mental defect of such a nature that it would be seriously handicapped; or

- (ii) due to a permanent mental handicap or defect is unable to comprehend the consequential implications of or bear the parental responsibility for the fruit of coitus;

[Para. (a) amended by s. 3 of Act No. 48 of 1982.]

- (b) the person who may in law consent to an operation beneficial to that person has granted written consent to the sterilization or, if there is no such first-mentioned person or such person cannot after reasonable inquiry be found, the magistrate of the district in which the person concerned finds himself or herself has, after such investigation as he may deem fit, granted written authority for the sterilization; and

[Para. (b) substituted by s. 1 (a) of Act No. 38 of 1980.]

- (c) the Minister, or a medical officer of the Department of Health authorized thereto by him in writing, has granted written authority for the sterilization.

[Para. (c) substituted by s. 1 (b) of Act No. 38 of 1980.]

(2) The person who may consent to an operation as contemplated in subsection (1) (b), is hereby authorized to grant the consent referred to therein.

(3) The provisions of this section shall not be construed as affecting the position in law of any person capable of consenting or competent to consent to an operation on himself.

5. Place where abortion or sterilization may take place.—(1) An abortion may be procured and a sterilization contemplated in section 4 may be performed only at a State-controlled institution or an institution designated in writing for the purpose by the Minister in terms of subsection (2).

(2) The Minister may designate any institution for the purposes of subsection (1), and subject to such conditions and requirements as he may consider necessary or expedient for achieving the objects of this Act, and may, if in his opinion it is justified, at any time withdraw any such designation.

(3)

[Sub-s. (3) deleted by s. 58 of Act No. 88 of 1996.]

6. Approval by medical practitioner in charge of institution, and certificate by magistrate.—(1) An abortion shall not be procured and a sterilization contemplated in section 4 shall not be performed without the written authority of—

- (a) in the case of a State-controlled institution, the medical practitioner in charge of such institution or a medical practitioner designated for the purpose by the first-mentioned medical practitioner; or
- (b) in the case of an institution designated in terms of section 5 (2), a medical practitioner designated for the purpose by the person managing such institution,

granted on application to such medical practitioner in accordance with subsection (2).

(2) An application for authority in terms of subsection (1) shall be made in the prescribed form by the medical practitioner who is to procure the abortion in question or perform the sterilization in question, and shall be accompanied—

- (a) in the case of an intended abortion—

- (i) in the circumstances contemplated in subsection (4), by the certificate referred to in that subsection;
 - (ii) by the certificate or certificates referred to in section 3 issued by two medical practitioners;
- (b) in the case of an intended sterilization, by the certificate or certificates, consent and authority referred to in section 4.

(3) If a medical practitioner has issued a certificate for the purposes of section 3 (1) and he is at any time such a medical practitioner as is referred to in subsection (1) of this section, he shall not be precluded from granting any relevant authority for the purposes of the said subsection.

(4) Where the pregnancy is alleged to be the result of unlawful carnal intercourse, the abortion shall not be procured unless there is produced to the medical practitioner whose written authority is required in terms of subsection (1) a certificate, issued by a magistrate of the district in which the offence in question is alleged to have been committed, to the effect that—

- (a) he has satisfied himself—
 - (i) that a complaint relating to the alleged unlawful carnal intercourse in question has been lodged with the Police or, if such a complaint has not been so lodged, that there is a good and acceptable reason why a complaint has not been so lodged;
 - (ii) after an examination of any relevant documents submitted to him by the Police and after such interrogation of the woman concerned or any other person as he may consider necessary, that, on a balance of probability, unlawful carnal intercourse with the woman concerned had taken place;
 - (iii) in the case of alleged incest, that the woman concerned is within the prohibited degree related to the person with whom she is alleged to have committed incest; and
- (b) the woman concerned alleges, in an affidavit submitted to the magistrate or in a statement under oath to the magistrate, that the pregnancy is the result of that unlawful carnal intercourse.

[Sub-s. (4) amended by s. 2 of Act No. 38 of 1980. Para (b) substituted by s. 4 (a) of Act No. 48 of 1982.]

(5)

[Sub-s. (5) deleted by s. 4 (b) of Act No. 48 of 1982.]

(6) If an application complying with the requirements of this section is made to any medical practitioner referred to in subsection (1), such medical practitioner may institute such investigation as he may deem necessary in order to satisfy himself that the application complies with the requirements of section 3 or 4, as the case may be, and if the medical practitioner concerned is so satisfied, he shall grant the authority in question.

[Sub-s. (6) substituted by s. 4 (c) of Act No. 48 of 1982.]

7. Reports.—(1) A medical practitioner who under section 6 (1) grants authority for an abortion or a sterilization, shall, in the prescribed manner and within the prescribed period after the abortion or sterilization, by registered post report confidentially to the Director-General the granting of such authority and set forth—

- (a) the name, age, marital state, race and, in the case of a sterilization, the sex of the patient concerned;

- (b) the place where and the date on which the abortion was procured or the sterilization was performed, and, in the case of an abortion, the reasons therefor;
- (c) the names and qualifications of the medical practitioners and the name of the magistrate who issued the certificate or certificates in terms of section 3, 4 or 6, as the case may be;
- (d) the name of the medical practitioner who procured the abortion or performed the sterilization;
- (e) where the consent of any person other than the patient was required for the abortion or the sterilization, the name of the person who consented thereto, and the capacity in which he granted his consent.

[Sub-s. (1) amended by s. 5 (a) of Act No. 48 of 1982.]

(2) The Director-General may call upon a medical practitioner required to make a report in terms of subsection (1) or a medical practitioner referred to in subsection (1) (d) to furnish such additional information as he may require.

[Sub-s. (2) amended by s. 5 (b) of Act No. 48 of 1982.]

(3) The person in charge of an institution where an operation connected with an abortion or the removal of the residue of a pregnancy is performed, shall keep or cause to be kept a record of the prescribed particulars in respect of any such operation in that institution, and shall—

- (a) when called upon to do so, make such record available, for inspection, to the Director-General or a person authorized thereto by him in writing; and

[Para. (a) amended by s. 5 (b) of Act No. 48 of 1982.]

- (b) transmit to the Director-General at the time prescribed the prescribed information with reference to any such operation.

[Para. (b) amended by s. 5 (b) of Act No. 48 of 1982.]

8. Regulations.—The Minister may make regulations—

- (a) prescribing the form in which an application shall be made or an authority shall be granted in terms of section 6;
- (b) as to the custody and disposal of certificates and reports in terms of this Act;
- (c) as to the particulars of the records to be kept in terms of section 7 (3);
- (d) generally as to any matter in respect of which he deems it necessary or expedient to make regulations to achieve the objects of this Act.

9. Participation in or assistance at abortion which is not prohibited, or a sterilization.—A medical practitioner (other than a medical practitioner referred to in section 6 (1)), a nurse or any person employed in any other capacity at an institution referred to in section 5 (1) shall, notwithstanding any contract or the provisions of any other law, not be obliged to participate in or assist with any abortion contemplated in section 3 or any sterilization contemplated in section 4.

10. Offences and penalties.—(1) Any person—

- (a) who is not a medical practitioner and procures an abortion;
- (b) who is a medical practitioner and—

- (i) procures an abortion without an appropriate certificate or certificates issued by two medical practitioners in terms of section 3 (1) (a), (b), (c), (d) or (e); or

[Sub-para. (i) substituted by s. 6 (a) of Act No. 48 of 1982.]

- (ii) procures an abortion or performs a sterilization—

- (aa) at an institution other than an institution referred to in section 5; or

- (bb) without appropriate written authority referred to in section 6 (1);

- (c) who performs a sterilization in contravention of section 4;

- (d) who issues a false certificate for the purposes of section 3 (1) (a), (b), (c), (d) or (e) or 4 (1) (a);

[Para. (d) substituted by s. 6 (b) of Act No. 48 of 1982.]

- (e) who grants any written authority referred to in section 6 (1) without being in possession of an appropriate certificate referred to in section 6 (4),

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person—

- (a) who grants a written authority contemplated in section 6 (1) on an application which does not substantially comply with the requirements of an application as prescribed;

- (b) who contravenes a provision of section 7 (1) or (3);

- (c) who fails to furnish the additional information required of him under section 7 (2);

- (d) who fails to comply with any provision of this Act not mentioned in this section,

shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred and fifty rand or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

11.

[S. 11 substituted by s. 1 of Act No. 18 of 1976 and repealed by s. 1 of Act No. 49 of 1996.]

12. Amendment of section 2 of Act 38 of 1909 (Transvaal), as amended by section 19 of Act 26 of 1963.—Section 2 of the Criminal Law Amendment Act, 1909 (of the Transvaal), is hereby amended by the deletion of subsection (8).

13. Short title.—This Act shall be called the Abortion and Sterilization Act, 1975.
