[Last checked: 5 September 2025.*]
*The last time this Act was reviewed for updates.

CHOICE ON TERMINATION OF PREGNANCY ACT 92 OF 1996

[Updated to 18 February 2008.**]
**Date of last changes incorporated into this Act.

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(Afrikaans text signed by the President.)

(Assented to 12 November 1996.)

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Published: G. 17602 of 22 November 1996

Commencement: **1 February 1997**

ProcR 8, G. 17746 of 31 January 1997

Amended

Choice on Termination of Pregnancy Amendment Act 38 of 2004 (G. 27267, with effect from 11 February 2005),

Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (G. 30599, with effect from 16 December 2007),

Choice on Termination of Pregnancy Amendment Act 1 of 2008 (G. 30790, with effect from 18 February 2008).

General Note: (1) The Choice on Termination of Pregnancy Amendment Act 38 of 2004 was declared inconsistent with the Constitution by the Constitutional Court (See Doctors for Life International v Speaker of the National Assembly and Others 2006 (6) SA 416 (CC)). (Order of Court dated 17 August 2006 and published in Government *Gazette* G. 29207 dated 15 September 2006).
The order of invalidity was suspended for 18 months to enable Parliament to re-enact this statute in a manner that is consistent with the Constitution.
The Choice on Termination of Pregnancy Amendment Act 1 of 2008 was assented to on 12 February 2008 and promulgated on 18 February 2008.

(2) Act 38 of 2004, s 7 substituted for the expression "registered midwife", wherever it appears, of the expression "registered midwife or registered nurse".

(3) Act 1 of 2008, s 7 substituted 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).

ACT

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.

PREAMBLE

Recognising the values of human dignity, the achievement of equality, security of the person, non-racialism and non-sexism, and the advancement of human rights and freedoms which underlie a democratic South Africa;

Recognising that the Constitution protects the right of persons to make decisions concerning reproduction and to security in and control over their bodies;

Recognising that both women and men have the right to be informed of and to have access to safe, effective, affordable and acceptable methods of fertility regulation of their choice, and that women have the right of access to appropriate health care services to ensure safe pregnancy and childbirth;

Recognising that the decision to have children is fundamental to women's physical, psychological and social health and that universal access to reproductive health care services includes family planning and contraception, termination of pregnancy, as well as sexuality education and counselling programmes and services;

Recognising that the State has the responsibility to provide reproductive health to all, and also to provide safe conditions under which the right of choice can be exercised without fear or harm;

Believing that termination of pregnancy is not a form of contraception or population control;

This Act therefore repeals the restrictive and inaccessible provisions of the Abortion and Sterilisation Act, 1975 (Act 2 of 1975), and promotes reproductive rights and extends freedom of choice by affording every woman the right to choose whether to have an early, safe and legal termination of pregnancy according to her individual beliefs.

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

ARRANGEMENT OF SECTIONS

1. Definitions
2. Circumstances in which and conditions under which pregnancy may be terminated
3. Place where termination of pregnancy may take place
4. Counselling
5. Consent
6. Information concerning termination of pregnancy
7. Notification and keeping of records
8. Delegation
9. Regulations
10. Offences and penalties
11. Application of Act
12. Short title

Schedule

1. Definitions

In this Act, unless the context otherwise indicates—

"Director-General" means the Director-General of Health;

"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;

"Head of Department" means the head of a provincial health department;

["Head of Department" inserted by s 1(a) of Act 38 of 2004, s 1(a) of Act 1 of 2008.]

"incest" means sexual intercourse between two persons who are related to each other in a degree which precludes a lawful marriage between them as contemplated in section 12 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;

["incest" substituted by s 68 of Act 32 of 2007.]

"medical practitioner" means a person registered as such under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974);

"Member of the Executive Council" means the member of the Executive Council of a province who is responsible for health in that province;

["Member of the Executive Council" inserted by s 1(b) of Act 38 of 2004, s 1(b) of Act 1 of 2008.]

"Minister" means the Minister of Health;

"minor" means any female person under the age of 18 years;

"prescribe" means prescribe by regulation under section 9;

"rape" refers to the offences contemplated in sections 3, 4 and 15 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;

["rape" substituted by s 68 of Act 32 of 2007.]

"registered midwife" means a person registered as such under the Nursing Act, 2005 (Act 33 of 2005), and who has in addition undergone prescribed training in terms of this Act;

["registered midwife" substituted by s 1(c) of Act 38 of 2004, s 1(c) of Act 1 of 2008.]

"registered nurse" means a person registered as such under the Nursing Act, 2005 (Act 33 of 2005), and who has in addition undergone prescribed training in terms of this Act;

["registered nurse" inserted by s 1(d) of Act 38 of 2004, s 1(d) of Act 1 of 2008.]

"termination of a pregnancy" means the separation and expulsion, by medical or surgical means, of the contents of the uterus of a pregnant woman;

"woman" means any female person of any age.

2. Circumstances in which and conditions under which pregnancy may be terminated

(1) A pregnancy may be terminated—

(a) upon request of a woman during the first 12 weeks of the gestation period of her pregnancy;

(b) from the 13th up to and including the 20th week of the gestation period if a medical practitioner, after consultation with the pregnant woman, is of the opinion that—

(i) the continued pregnancy would pose 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

(iii) the pregnancy resulted from rape or incest; or

(iv) the continued pregnancy would significantly affect the social or economic circumstances of the woman; or

(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;

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

(iii) would pose a risk of injury to the fetus.

(2) 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.

3. Place where termination of pregnancy may take place

(1) Termination of a pregnancy may take place only at a facility which—

(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;

(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;

(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*.

(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.

(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).

(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.

[S 3 substituted by s 2 of Act 38 of 2004, s 2 of Act 1 of 2008.]

4. Counselling

The State shall promote the provision of non-mandatory and non-directive counselling, before and after the termination of a pregnancy.

5. Consent

(1) Subject to the provisions of subsections (4) and (5), the termination of a pregnancy may only take place with the informed consent of the pregnant woman.

(2) Notwithstanding any other law or the common law, but subject to the provisions of subsections (4) and (5), no consent other than that of the pregnant woman shall be required for the termination of a pregnancy.

(3) 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.

(4) Subject to the provisions of subsection (5), in the case where a woman is—

(a) severely mentally disabled to such an extent that she is completely incapable of understanding and appreciating the nature or consequences of a termination of her pregnancy; or

(b) in a state of continuous unconsciousness and there is no reasonable prospect that she will regain consciousness in time to request and to consent to the termination of her pregnancy in terms of section 2,

her pregnancy may be terminated during the first 12 weeks of the gestation period, or from the 13th up to and including the 20th week of the gestation period on the grounds set out in section 2(1)(b)—

(i) upon the request of and with the consent of her natural guardian, spouse or legal guardian, as the case may be; or

(ii) if such persons cannot be found, upon the request and with the consent of her *curator personae*:

Provided that such pregnancy may not be terminated unless two medical practitioners or a medical practitioner and a registered midwife who has completed the prescribed training course consent thereto.

(5) Where two medical practitioners or a medical practitioner and a registered midwife who has completed the prescribed training course, are of the opinion that—

(a) during the period up to and including the 20th week of the gestation period of a pregnant woman referred to in subsection (4)(a) or (b)—

(i) the continued pregnancy would pose 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) after the 20th week of the gestation period of a pregnant woman referred to in subsection (4)(a) or (b), the continued pregnancy—

(i) would endanger the woman's life;

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

(iii) would pose a risk of injury to the fetus,

they may consent to the termination of the pregnancy of such woman after consulting her natural guardian, spouse, legal guardian or curator personae, as the case may be: Provided that the termination of the pregnancy shall not be denied if the natural guardian, spouse, legal guardian or *curator personae*, as the case may be, refuses to consent thereto.

6. Information concerning termination of pregnancy

A woman who in terms of section 2(1) requests a termination of pregnancy from a medical practitioner or a registered midwife, as the case may be, shall be informed of her rights under this Act by the person concerned.

7. Notification and keeping of records

(1) Any medical practitioner, or a registered midwife who has completed the prescribed training course, who terminates a pregnancy in terms of section 2(1)(a) or (b), shall record the prescribed information in the prescribed manner and give notice thereof to the person referred to in subsection (2).

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

(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 relevant Head of Department: Provided that the name and address of a woman who has requested or obtained a termination of pregnancy, shall not be included in the prescribed information.

[S 7(3), words preceding the proviso, substituted by s 3(a) of Act 38 of 2004, s 3(a) of Act 1 of 2008.]

(4) The 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 6 months.

[S 7(4) substituted by s 3(b) of Act 38 of 2004, s 3(b) of Act 1 of 2008.]

(5) The identity of a woman who has requested or obtained a termination of pregnancy shall remain confidential at all times unless she herself chooses to disclose that information.

8. Delegation

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

(2) The 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 Head of Department by or under this Act.

(3) The 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 that person.

[S 8 substituted by s 4 of Act 38 of 2004, s 4 of Act 1 of 2008.]

9. Regulations

The Member of the Executive Council may, in consultation with the Minister, make regulations relating to any matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.

[S 9 substituted by s 5 of Act 38 of 2004, s 5 of Act 1 of 2008.]

10. Offences and penalties

(1) Any person who—

(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);

(b) is not a medical practitioner and who performs the termination of a pregnancy referred to in section 2(1)(b) or (c);

(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),

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years.

[S 10(1) substituted by s 6 of Act 38 of 2004, s 6 of Act 1 of 2008.]

(2) Any person who contravenes or fails to comply with any provision of section 7 shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 6 months.

11. Application of Act

(1) This Act shall apply to the whole of the national territory of the Republic.

(2) This Act shall repeal—

(a) the Act mentioned in columns one and two of the Schedule to the extent set out in the third column of the Schedule; and

(b) 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 200 of 1993), possessed legislative authority with regard to the termination of a pregnancy.

12. Short title

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

SCHEDULE

No. and year of law	Short title	Extent of repeal
Act 2 of 1975	Abortion and Sterilisation Act, 1975	In so far as it relates to abortion