

CHAPTER 15:10

TERMINATION OF PREGNANCY ACT

Act 29/1977, 8/2001 (s. 27), 22/2001 (s. 4), 23/2004 (s. 282), 5/2014 (s. 33).

ARRANGEMENT OF SECTIONS

PART I

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AN ACT to change the law relating to abortion by defining the circumstances in which a pregnancy may be terminated and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 1st January, 1978.]

1 Short title

This Act may be cited as the Termination of Pregnancy Act [*Chapter 15:10*].

2 Interpretation

(1) In this Act—

“designated institution” means a State hospital or such other institution as may, in terms of subsection (3), be declared to be a designated institution for the purposes of this Act;

“foetus” includes an embryo;

“medical practitioner” means a medical practitioner who is registered in terms of the Medical, Dental and Allied Professions Act [Chapter 27:08] as a medical practitioner;

“Minister” means the Minister of Health and Child Welfare or any other Minister to whom the President may, from time to time, assign the administration of the Act;

“pregnancy” means an intra-uterine pregnancy where the foetus is alive;

“Secretary” means the Secretary of the Ministry for which the Minister is responsible;

“superintendent”, in relation to a designated institution, means the medical superintendent of a State hospital or the person specified, in terms of subsection (3), to be the superintendent of any other designated institution;

“unlawful intercourse” means rape, other than rape within a marriage, and sexual intercourse within a prohibited degree of relationship, other than sexual intercourse with a person referred to in paragraph (i) or (j) of subsection (1) of section 75 of the Criminal Code.

[Definition substituted by section 282 of Act 23 of 2004]

(2) Any reference in this Act to the termination of a pregnancy shall be construed as meaning the termination of a pregnancy otherwise than with the intention of delivering a live child.

(3) The Minister may, by statutory instrument, declare any hospital, clinic or other institution to be a designated institution for the purposes of this Act and shall specify the person who shall be the superintendent of that designated institution.

3 Prohibition of termination of pregnancy otherwise than in accordance with this Act

(1) No person may terminate a pregnancy otherwise than in accordance with this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001.]

4 Circumstances in which pregnancy may be terminated

Subject to this Act, a pregnancy may be terminated—

- (a) where the continuation of the pregnancy so endangers the life of the woman concerned or so constitutes a serious threat of permanent impairment of her physical health that the termination of the pregnancy is necessary to ensure her life or physical health, as the case may be; or
- (b) where there is a serious risk that the child to be born will suffer from a physical or mental defect of such a nature that he will permanently be seriously handicapped; or
- (c) where there is a reasonable possibility that the foetus is conceived as a result of unlawful intercourse.

5 Conditions under which pregnancy may be terminated

(1) Subject to section *seven*, a pregnancy may only be terminated by a medical practitioner in a designated institution with the permission in writing of the superintendent thereof.

(2) In the case of the termination of a pregnancy on the grounds referred to in paragraph (a) or (b) of section *four*, the superintendent shall not give the permission referred to in subsection (1) unless he is satisfied that—

- (a) the medical practitioner referred to in subsection (1) and one other medical practitioner; or
- (b) any two medical practitioners;

who are not members of the same medical partnership or otherwise involved in the same medical practice have certified in the prescribed form that in their opinion the circumstances referred to in paragraph (a) or (b) of section *four* exist and that, in the case of the circumstances referred to in paragraph (b) of that section, any prescribed investigation, scientific or otherwise, has been carried out.

(3) In the case of the termination of a pregnancy on the grounds referred to in paragraph (c) of section *four*, the superintendent shall give the permission referred to in subsection (1) on the production to him of the appropriate certificate in terms of subsection (4).

(4) A pregnancy may only be terminated on the grounds referred to in paragraph (c) of section *four* by a medical practitioner after a certificate has been issued by a magistrate of a court in the jurisdiction of which the pregnancy is terminated to the effect that—

- (a) he has satisfied himself—
 - (i) that a complaint relating to the alleged unlawful intercourse in question has been lodged with the authorities; and
 - (ii) after an examination of any relevant documents submitted to him by the authorities and after such interrogation of the woman concerned or any other person as he may consider necessary, that, on a balance of probabilities, unlawful intercourse with the woman concerned has taken place and there is a reasonable possibility that the pregnancy is the result of such intercourse; and
 - (iii) in the case of the alleged incest, that the woman concerned is related within the prohibited degree to the person with whom she is alleged to have had incest; and
- (b) in the case of alleged rape or incest, the woman concerned has alleged in an affidavit submitted to the magistrate or in a statement made under oath to the magistrate that the pregnancy could be the result of that rape or incest, as the case may be.

(5) A superintendent of a designated institution who—

- (a) gives the permission referred to in subsection (1) without being satisfied as to the matters referred to in subsection (2); or
- (b) gives the permission referred to in subsection (1) on a certificate referred to in subsection (2) which he knows to be false in a material particular or does not know or reasonably believe to be true; or

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(6) Any person who—

- (a) issues a certificate for the purposes of subsection (2) which he knows to be false in a material particular or does not know or reasonably believe to be true; or
- (b) makes any allegation or statement for the purposes of subparagraph (ii) of paragraph (a) or paragraph (b) of subsection (4) which he knows to be false in a material particular or does not know or reasonably believe to be true;

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

6 Appeal against refusal of superintendent to give permission

Any person who is dissatisfied with the refusal of the superintendent of a designated institution to give the permission referred to in subsection (1) of section *five* may appeal to the Secretary whose decision shall be deemed to be the decision of the superintendent.

7 Emergencies

(1) Subject to this section, a medical practitioner may terminate a pregnancy if he is satisfied on reasonable grounds that—

- (a) the circumstances referred to in paragraph (a) of section *four* exist; and
- (b) the exigencies of the circumstances are such that subsection (1) of section *five* cannot be complied with.

(2) Where a medical practitioner has acted in terms of subsection (1), he shall within forty-eight hours prepare and submit a report in the prescribed form on the matter to the Secretary.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

8 Information to be forwarded to Secretary

(1) A superintendent shall, within fourteen days of the receipt of such documents, submit to the Secretary any certificates referred to in subsection (2) of section *five*.

(2) The Secretary may at any time in writing or through any person designated by him require a superintendent or a medical practitioner who may have knowledge of the termination of a pregnancy to provide any information in regard to that termination of pregnancy which he may specify, whether or not this Act has been complied with.

(3) Any person who is required to provide information in terms of subsection (2) shall comply with such requirement, whether or not the information tends to incriminate him in an offence.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

9 Report by Secretary

Where the Secretary is of the opinion that—

- (a) an offence has been committed, he shall submit a report to the Prosecutor-General together with such information which it is in his power to give in regard thereto; or
- (b) any medical practitioner or any other person has been guilty of any conduct, act or omission referred to in subsection (1) of section 56 of the Medical, Dental and Allied Professions Act [*Chapter 27:08*], he shall submit a report to the Registrar of the Health Professions Council together with any information which it is in his power to give.

10 No person to be required to participate or assist in termination of pregnancy

Notwithstanding any law or agreement to the contrary, no medical practitioner or nurse or person employed in any other capacity at a designated institution shall be obliged to participate or assist in the termination of a pregnancy.

11 Fee to be as prescribed

(1) No person shall offer and no person shall receive for any service in connection with the termination of a pregnancy, including the provision of hospital or other facilities, any fee in excess of such fee as may be prescribed.

(2) A fee referred to in subsection (1) may be prescribed by reference to any fee charged for any service in a State hospital.

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[Section repealed by section 4 of Act 22 of 2001]

13 Regulations

The Minister may by regulation provide for all matters which by this Act are required or are permitted to be prescribed or which in his opinion are necessary or convenient to be provided for in order to carry out or give effect to this Act.