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Cape Town,
Kaapstad, 11 February
2005

No. 27267

THE PRESIDENCY

No. 129

11 February 2005

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 38 of 2004: Choice on Termination of Pregnancy Amendment Act, 2004.

DIE PRESIDENSIE

No. 129

11 Februarie 2005

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 38 van 2004: Wysigingswet op Keuse oor die Beëindiging van Swangerskap, 2004.

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.

(*English text signed by the President.*)
(Assented to 4 February 2005.)

ACT

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—

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(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:

“**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:

“**registered midwife**” means a person registered as such under the Nursing Act, 1978 (Act No. 50 of 1978), 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:

“**registered nurse**” means a person registered as such under the Nursing Act, 1978 (Act No. 50 of 1978), and who has in addition undergone prescribed training in terms of this Act;”.

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ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
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- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.
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*(Engelse teks deur die President geteken.)
(Goedgekeur op 4 Februarie 2005.)*

WET

Tot wysiging van die Wet op Keuse oor die Beëindiging van Swangerskap, 1996, ten einde 'n omskrywing te wysig en ander in te voeg; 'n Lid van die Uitvoerende Raad te bemagtig om fasiliteite goed te keur waar 'n beëindiging van swangerskap kan plaasvind; 'n fasiliteit wat 'n 24-uur-kraamdiens lewer, daarvan vry te stel om in bepaalde omstandighede goedkeuring vir dienste betreffende die beëindiging van swangerskap te verkry; voorsiening te maak vir die aanteken van inligting en die voorlegging van statistieke; 'n Lid van die Uitvoerende Raad in staat te stel om regulasies uit te vaardig; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 92 van 1996

1. Artikel 1 van die Wet op Keuse oor die Beëindiging van Swangerskap, 1996 (hierna die Hoofwet genoem), word hierby gewysig—
- (a) deur die volgende omskrywing na die omskrywing van "**bloedskande**" in te voeg:
“**Departementshoof**” die hoof van 'n provinsiale gesondheidsdepartement;”;
- (b) deur die volgende omskrywing na die omskrywing van "**geneesheer**" in te voeg:
“**geregistreerde verpleegkundige**” iemand wat as sodanig kragtens die Wet op Verpleging, 1978 (Wet No. 50 van 1978), geregistreer is en wat daarbenewens voorgeskrewe opleiding ingevolge hierdie Wet ondergaan het;”.
- (c) deur die omskrywing van "**geregistreerde vroedvrou**" deur die volgende omskrywing te vervang:
“**geregistreerde vroedvrou**” iemand wat as sodanig kragtens die Wet op Verpleging, 1978 (Wet No. 50 van 1978), geregistreer is en wat daarbenewens voorgeskrewe opleiding ingevolge hierdie Wet ondergaan het; en
- (d) deur die volgende omskrywing na die omskrywing of "**geregistreerde vroedvrou**" in te voeg:
“**Lid van die Uitvoerende Raad**” die Lid van die Uitvoerende Raad van 'n provinsie wat verantwoordelik is vir gesondheid in daardie provinsie.”.

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Act No. 38, 2004

CHOICE ON TERMINATION OF PREGNANCY
AMENDMENT ACT, 2004**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"

<p>3. (1) Termination of a pregnancy may take place only at a facility which—</p> <ul style="list-style-type: none"> (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 <i>Gazette</i>. <p>(2) The Member of the Executive Council may withdraw any approval granted in terms of subsection (1)(k).</p> <p>(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.</p> <p>(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).</p> <p>(4) The Member of the Executive Council shall once a year submit statistics of any approved facilities for that year to the Minister.</p> <p>(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."</p>	5 10 15 20 25 30 35
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Amendment of section 7 of Act 92 of 1996

3. Section 7 of the principal Act is hereby amended—

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| <p>(a) by the substitution in subsection (3) for the words preceding the proviso of the following words:</p> <p style="padding-left: 20px;">"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] <u>relevant Head of Department</u>"; and</p> <p>(b) by the substitution for subsection (4) of the following subsection:</p> <p style="padding-left: 20px;">"(4) The [Director-General] <u>Head of Department</u> shall—</p> <ul style="list-style-type: none"> (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.". | 40
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Vervanging van artikel 3 van Wet 92 van 1996

2. Artikel 3 van die Hoofwet word hierby deur die volgende artikel vervang:

“Plek waar beëindiging van swangerskap kan plaasvind

3. (1) Die beëindiging van 'n swangerskap kan plaasvind slegs by 'n fasiliteit wat —

- (a) toegang verleen tot geneeskundige en verpleegpersoneel;
- (b) toegang verleen tot 'n operasieteater;
- (c) toepaslike chirurgiese toerusting het;
- (d) geneesmiddels vir binneaarse- en binnespierse-inspuitings voorsien;
- (e) noodresussiteringstoerusting en toegang tot 'n noodverwysings-sentrum of -fasiliteit het;
- (f) toegang verleen tot toepaslike vervoer indien die behoefte aan noodoorplasing ontstaan;
- (g) fasiliteite en toerusting vir kliniese waarneming en toegang tot binnekasiëntfasiliteite het;
- (h) toepaslike infeksiebeheermaatreëls het;
- (i) toegang verleen tot veilige afvalwegdoeningsinfrastruktuur;
- (j) telefoniese kommunikasiemiddelle het; en
- (k) by kennisgewing in die *Staatskoerant* goedgekeur is deur die Lid van die Uitvoerende Raad.

(2) Die Lid van die Uitvoerende Raad kan enige goedkeuring intrek wat ingevolge subartikel (1)(k) verleen is.

(3) (a) Enige gesondheidsfasiliteit wat 'n 24-uur-kraamdiens lewer, en wat voldoen aan die vereistes in subartikel (1)(a) tot (j) bedoel, kan swangerskappe van tot en met 12 weke beëindig sonder om die goedkeuring van die Lid van die Uitvoerende Raad te verkry.

(b) Die persoon in beheer van 'n gesondheidsfasiliteit beoog in paragraaf (a) moet die tersaaklike Lid van die Uitvoerende Raad in kennis stel dat die gesondheidsfasiliteit 'n 24-uur-kraamdiens lewer wat voldoen aan die vereistes in subartikel (1)(a) tot (j) bedoel.

(4) Die Lid van die Uitvoerende Raad moet een maal per jaar statistieke oor enige goedgekeurde fasiliteite vir daardie jaar aan die Minister voorlê.

(5) Ondanks andersluidende bepalings in hierdie Wet kan die Minister enige van die werksaamhede verrig wat die Lid van die Uitvoerende Raad kan of moet verrig indien dit nodig is om sodanige werksaamheid te verrig ten einde enige van die oogmerke van hierdie Wet te bereik.".

Wysiging van artikel 7 van Wet 92 van 1996

3. Artikel 7 van die Hoofwet word hierby gewysig—

(a) deur die woorde wat die voorbehoudsbepaling in subartikel (3) voorafgaan deur die volgende woorde te vervang:

“Die persoon in beheer van 'n fasiliteit in artikel 3 bedoel, moet binne een maand vanaf die beëindiging van 'n swangerskap by so 'n fasiliteit, die voorgeskrewe inligting kollasioneer en dit vertroulik per geregistreerde pos aan die **[Direkteur-generaal]** tersaaklike Departementshoof versend”; en

(b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Die **[Direkteur-generaal]** Departementshoof moet—

(a) aantekeninge hou van die voorgeskrewe inligting wat hy of sy ingevolge subartikel (3) ontvang; en

(b) die inligting beoog in paragraaf (a) elke ses maande aan die **Direkteur-generaal** voorlê.”.

Act No. 38, 2004**CHOICE ON TERMINATION OF PREGNANCY
AMENDMENT ACT, 2004****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—

- (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]
- (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 35 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”. 45

Vervanging van artikel 8 van Wet 92 van 1996

4. Artikel 8 van die Hoofwet word hierby deur die volgende artikel vervang:

“Delegering

8. (1) Die [Minister] Lid van die Uitvoerende Raad kan, op die voorwaardes wat hy of sy bepaal, enige bevoegdheid by of kragtens hierdie Wet aan [hom of haar] die Lid van die Uitvoerende Raad verleen, behalwe die bevoegdheid in artikel 9 bedoel, skriftelik aan die [Direkteur-generaal] Departementshoof of 'n ander beampete in diens van die Staat deleger.

(2) Die [Direkteur-generaal] Departementshoof kan, op die voorwaardes wat hy of sy bepaal, enige bevoegdheid by of kragtens hierdie Wet aan [hom of haar] die Departementshoof verleen [of kragtens subartikel (1) aan hom of haar gedelegeer], skriftelik aan 'n beampete in diens van die Staat deleger.

(3) Die [Minister of Direkteur-generaal] Lid van die Uitvoerende Raad of Departementshoof is nie ontdoen van enige bevoegdheid wat hy of sy gedelegeer het nie, en kan enige beslissing van 'n persoon wat geneem word in die uitoefening van enige sodanige bevoegdheid aan [hom of haar] daardie persoon gedelegeer, wysig of herroep.”.

Vervanging van artikel 9 van Wet 92 van 1996

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5. Artikel 9 van die Hoofwet word hierby deur die volgende artikel vervang:

“Regulasies

9. Die [Minister] Lid van die Uitvoerende Raad kan regulasies in oorleg met die Minister [maak] uitvaardig betreffende enige aangeleentheid wat [hy of sy] nodig of dienstig [ag] is om voorgeskryf te word [ten einde die oogmerke] vir die behoorlike toepassing of administrasie van hierdie Wet [te bereik].

Wysiging van artikel 10 van Wet 92 van 1996

6. Artikel 10 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

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“(1) [n] Enige [Persoon] persoon wat—

- (a) nie 'n geneesheer of 'n geregistreerde vroedvrou of geregistreerde verpleegkundige is wat die voorgeskrewe opleidingskursus voltooi het nie en wat die beëindiging van 'n swangerskap in artikel 2(1)(a) bedoel, uitvoer;
- (b) nie 'n geneesheer is nie en wat die beëindiging van 'n swangerskap in artikel 2(1)(b) of (c) bedoel, uitvoer; [of]
- (c) die regmatige beëindiging van 'n swangerskap verhoed of toegang tot 'n fasilitet vir die [regmatige] beëindiging van 'n swangerskap verhinder; of
- (d) 'n swangerskap beëindig of die beëindiging van 'n swangerskap toelaat by 'n fasilitet wat nie ingevolge artikel 3(1) goedgekeur of in artikel 3(3)(a) beoog is nie,

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van [van] hoogstens 10 jaar.”.

Vervanging van bepaalde uitdrukking in Wet 92 van 1996

7. Die Hoofwet word hierby gewysig deur die uitdrukking “geregistreerde vroedvrou” oral waar dit voorkom deur die uitdrukking “geregistreerde vroedvrou of geregistreerde verpleegkundige” te vervang.

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Act No. 38, 2004**CHOICE ON TERMINATION OF PREGNANCY
AMENDMENT ACT, 2004****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, 2004.

Oorgangsbepling

8. Enige fasiliteit wat voor die inwerkingtreding van hierdie Wet ingevolge artikel 3(1) van die Hoofwet aangewys is, moet geag word deur die die Lid van die Uitvoerende Raad goedgekeur te wees ingevolge artikel 3(1)(k) van die Hoofwet soos by hierdie Wet gewysig.

Kort titel

9. Hierdie Wet heet die Wysigingswet op Keuse oor die Beeëindiging van Swangerskap, 2004.