

REPUBLIC OF SOUTH AFRICA

STERILISATION AMENDMENT BILL

*(As introduced in the National Council of Provinces as a section 76 Bill; draft Bill
published in Government Gazette No 26597 of 27 July 2004)
(The English text is the official text of the Bill)*

(SELECT COMMITTEE ON SOCIAL SERVICES ON REQUEST OF MINISTER OF HEALTH)

[B 12—2004]

ISBN 0 621 34846 5

No. of copies printed 1 800

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 Sterilisation Act, 1998, so as to substitute a definition; to make provision for a medical opinion in certain circumstances; to provide for additional information to be considered when contemplating sterilisation; 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 44 of 1998

1. Section 1 of the Sterilisation Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of “sterilisation” of the following definition:

“‘**sterilisation**’ means [a surgical procedure 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] a procedure whereby a person could be permanently rendered incapable of fertilisation or reproduction.”

Amendment of section 2 of Act 44 of 1998

2. Section 2 of the principal Act, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:
“**(1) [No] A person [is prohibited from having sterilisation performed on him or her] may be sterilised if he or she is—**
(a) capable of consenting; and
(b) 18 years of age or above.”

(b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
“*(a)* Sterilisation may [not] be performed on a person who is under the age of 18 years [except where] if failure to do so would jeopardize the person’s life or seriously impair his or her [physical] health.”; and

(c) by the addition to subsection (3) of the following paragraph:
“*(c)* A person contemplated in paragraph (a), may be sterilised if—
(i) consent is given by a person who is lawfully entitled to give consent; and
(ii) an independent medical practitioner who has previously consulted with the person to be sterilised has provided a written opinion to the effect that sterilisation is in the best interest of that person.”

Amendment of section 3 of Act 44 of 1998

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

- (a) by the substitution for the heading to section 3 of the following heading:
 “Person incapable of consenting or incompetent to consent due to
 [severe] mental disability” ; and 5
- (b) by the substitution in subsection (1) for paragraph (b) of the following
 paragraph:
 “(b) if a panel contemplated in subsection (2) after considering all relevant
 information, including [the fact that]— 10
- (i) the [person is 18 years of] person’s age[, unless the physical
 health of the person is threatened; and];
 - (ii) whether there [is no] are other safe and effective [method]
 alternatives [of contraception except] to sterilisation;
 - (iii) the person’s mental and physical health and wellbeing; 15
 - (iv) the potential effect of sterilisation on the person’s mental and
 physical health and wellbeing;
 - (v) the nature of the sterilisation procedure to be performed;
 - (vi) the likelihood that the person will become capable of consenting to
 sterilisation; 20
 - (vii) whether the sterilisation is in the best interests of the person to be
 sterilised; and
 - (viii) the benefit which the person may derived from sterilisation,
concur that sterilisation may be performed; and”.

Amendment of section 4 of Act 44 of 1998

25

4. Section 4 of the principal Act is hereby amended by the substitution for paragraph
 (c) of the following paragraph:

“(c) understood and signed the prescribed consent form.”.

Short title

5. This Act is called the Sterilisation Amendment Act, 2004. 30

MEMORANDUM ON THE OBJECTS OF THE STERILISATION AMENDMENT BILL, 2004

1. BACKGROUND

The Amendment Bill is precipitated by the Constitutional problem regarding the right of a person not to be discriminated against on the basis of age, amongst other things. The current Act does not allow a person to be sterilised where such a person is under the age of 18 years and does not fall within the ambit of section 2 or 3 of the Act. The Act defines sterilisation as a surgical procedure and does not allow any non-surgical procedures. The Western Cape Department of Health was recently ordered by the High Court to approve a sterilisation procedure on a person under the age of 18 years, who is severely mentally disabled and who could not understand or acknowledge her own physical condition. The panel contemplated by section 3(2) of the Act had declined the request for sterilisation on the basis that the Act expressly stated that sterilisation can be allowed where the physical health of a person (who is under the age of 18 years) is jeopardised, and not on the grounds of his or her mental health. This Bill, *inter alia*, aims to address those situations, by affording rights where they are due.

2. OBJECTS OF BILL

The objectives are as follows:

- (1) to amplify the definition of sterilisation so as to include any act or procedure that renders a person incapable of fertilisation or reproduction; the current definition refers to “surgical procedures” that exclude procedures such as hysterectomy if it is for medical reasons other than where a person’s physical health is being jeopardised;
- (2) to qualify “consent” as contained in section 4, with an informed consent, so as to obligate the providers to fully explain the procedure and potential or actual consequences of sterilisation;
- (3) to allow sterilisation of a person under the age of 18 years in circumstances where his or her health is being threatened; health in this regard includes both physical and mental health, as opposed to only physical health as is the case in the current Act;
- (4) to enable a parent, guardian, primary care-giver, medical practitioner or the Court, to give consent in circumstances where sterilisation will be in the best interest of the person concerned;
- (5) to ensure that the opinion of an independent medical practitioner, who previously consulted with the person to be sterilised, is taken into consideration by the panel. This will ensure that not only the rights of the care-giver are considered by the panel, but the personal circumstances of the mentally disabled person as determined by the said medical practitioner;
- (6) to ensure that the panel contemplated in section 3 must consider factors such as age, mental and physical wellbeing and whether it is in the best interest of the person concerned when dealing with a request for sterilisation of a person under 18 years of age and where such person is incapable of consenting; and
- (7) to amplify the purport of informed consent contemplated in subparagraph (2) above to ensure that where a person is capable of consenting, he or she must have fully understood the procedure of sterilisation before signing the consent form.

3. CONSULTATION

The Legal Unit of the National Department of Health consulted with all the provincial departments regarding the proposed amendments. In addition, the draft Bill was published for public comment and two comments were incorporated into the draft Bill. The Department also considered the concerns raised by Deputy Minister of Justice and a draft proposal by officials of the Department of Justice.

4. FINANCIAL IMPLICATIONS FOR STATE

There will be no new financial implications for the State at this stage.

5. IMPLICATIONS FOR PROVINCES

There will be no additional financial implications for the provinces.

6. PARLIAMENTARY PROCEDURE

The Department of Health and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the Parliamentary procedures established by section 76 of the Constitution, since it falls within a functional area listed in schedule 4 to the Constitution, namely "Health services".

Printed by Creda Communications

ISBN 0 621 34846 5