

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 Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, so as to insert a certain definition; to provide afresh for information to be obtained and kept in respect of cellular phones and SIM-cards; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 70 of 2002

1. Section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (hereinafter referred to as the principal Act), is hereby amended -

(a) by the insertion before the definition of "applicant" of the following definition:

"activate" means to allow access to the network of the telecommunication service provider who provides a mobile cellular

telecommunication service"; and

(b) by the insertion after the definition of "Executive Director" of the following definition:

" 'family member' means—

(a) a person who is related to another person biologically or by law, including customary or religious law ; or

(b) a person's permanent life partner; or

(c) a person who is not related to another person as contemplated in paragraph (a), but who has a relationship of responsibility towards such other person".

(c) by the substitution of the definition of "identification document" by the insertion after paragraph (a)(iii) of the following subparagraph:

"(iv) driving licence as defined in the National Road Traffic Act, 1993 (Act No. 90 of 1993);".

Substitution of section 40 of Act 70 of 2002

2. The following section is hereby substituted for section 40 of the principal Act:

"Information to be obtained and kept in respect of cellular phone and SIM-card by telecommunication service providers who provide a mobile cellular telecommunication service

40. (1) A telecommunication service provider who provides a mobile cellular telecommunication service shall not—

(a) activate a SIM-card; or

(b) allow the use of any cellular phone,

on its telecommunication system unless the particulars of the SIM-card or cellular phone are recorded and stored in the manner provided for in subsection (2) has been complied with.

(2) From the date of commencement of this section a telecommunication service provider must, subject to subsection (4), at own cost implement a process to record and store, and must record and store—

(a) the Mobile Subscriber Integrated Service Digital Network number (MSISDN-number) of the SIM-card that is to be activated customer;

(b) the International Mobile Equipment Identity number (IMEI-number) of the cellular phone that is to be used; and

(c) the full names, identity number reflected in the identification document and residential address, and, if applicable, the business and postal addresses of the person who requests that a SIM-card be activated or that a cellular phone be allowed on the network of a telecommunication service provider. to be used with a SIM-card; and

(d) in the case of a person who is not a South African citizen or is not

lawfully or permanently resident in the Republic, also the country of origin and the date of birth.

(3) For the purposes of subsection (2)(c), a telecommunication service provider must—

- (a) verify the full names and identity number of a person with reference to his or her identification document; and
- (b) require a person to submit documentation in which his or her addresses are identified to the satisfaction of the telecommunication service provider, including a valid television licence, a recent motor vehicle licence document, a municipal rates and taxes invoice, a bank statement or an affidavit, relating to the address of the customer, of a person who knows the customer.

OR

require the person to submit documentation of less than three months old which can reasonably be expected to achieve verification of that person's addresses, which may include —

- (i) a bank statement;
- (ii) a lease, rental or credit sale agreement;
- (iii) a telephone or cellular phone account;
- (iv) a municipal rates and taxes account;
- (v) a valid television licence;
- (vi) an insurance policy; and

(vii) official motor vehicle licence documentation.

(4) A telecommunication service provider must ensure that-

(a) the process contemplated in subsection (2);

(b) the information recorded and stored in terms of that subsection;

and

(c) the facility in or on which the information is recorded and stored,

are secure and only accessible to persons specifically designated by that telecommunication service provider in accordance with the criteria that may be determined by the Minister .

(5) Any customer who from the date of commencement of this section sells or in any other manner provides a cellular phone or SIM-card to a person other than a family member, and the person who is to receive the SIM-card or the cellular phone, must—

(a) — obtain from such person a document stating his or her— notify the telecommunication service provider of -

(i) the full names and ;-(ii)-identity number of both persons; and

(iii) the residential address, and if applicable, the business and postal addresses of the person who is to receive the SIM-card or the cellular phone .;

(b) — by referring to such person's identification document, verify the person's photo, full names and identity number;

(c) — retain the information referred to in paragraph (a); and

~~(d) — notify the telecommunication service provider of —~~

~~(i) — his or her own name and identity number;~~

~~(ii) — the date on which the cellular phone or SIM-card was handed to the other person; and~~

~~(iii) — the particulars set out in paragraph (a);~~

(6) A telecommunication service provider must, upon receipt of the information provided in terms of subsection (5)(d), -

(a) verify the full names and identity number of the persons with reference to the persons' identification documents, and

(b) require the person who is to receive the SIM-card or the cellular phone to submit the documentation referred to in subsection 3(b); and

(c) update the information recorded and stored in terms of subsection (2).

(7) Notwithstanding subsection (1) of section 39, subsections (3)(a) and (b) and (4) of that section apply with the necessary changes in respect of a telecommunication service provider who provides a mobile cellular telecommunication service: Provided that the requirement contemplated in section 39(3)(c) should be read as a reference to the identity number of that person and not a copy of the identification document."

(8) A telecommunication service provider who knows or suspects that an identity document submitted for verification as contemplated in subsection (3) is

falsified, must immediately report the knowledge or suspicion to the nearest police station.

Amendment of section 51 of Act 70 of 2002

3. Section 51 of the principal Act is hereby amended—

(a) by the substitution in subsection (1)(a) for subparagraph (i) of the following subparagraph:

"(i) contravenes or fails to comply with section 6(2), 7(4), 8(4), 29(8), [40(1), (2) or (3),] 42(1) or 45(1);";

(b) by the insertion after subsection (3) of the following subsections:

(3A) Any telecommunication service provider who fails to comply with section 40(1), (2), (3), (4), or (6) or (7) or section 62(6)(a), (b)-or-, (c) or (d) is guilty of an offence and liable on conviction to a fine not exceeding R100 000 for each day on which such failure to comply continues.

(3B) Any customer who fails to comply with section 40(5) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months."; and

(3C) Any telecommunication service provider who fails to comply with section 40(8) is guilty of an offence and liable on conviction to a fine not exceeding R2 000."

(c) by the deletion in subsection (5) of the word "or" at the end of paragraph

(b) and the insertion after that paragraph of the following paragraph:

“(bA) subsection (3A) does not relieve any telecommunication service provider of the obligation to comply with section 40(1), (2), (3), (4) or (6) or section 62(6)(a), (b)-~~or~~, (c) or (d); or”.

Amendment of section 62 of Act 70 of 2002

4. Section 62 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) (a) A telecommunication service provider who provides a mobile cellular telecommunication service must, within 12 months from the date of commencement of this section, record and store the particulars of all SIM-cards and cellular phones that are used on its telecommunication system if such particulars have not already been the information specified in paragraph (b) if not already recorded and stored in terms of section 40.

(b) A telecommunication service provider must, subject to subparagraph (d), at own cost implement a process to record and store, and must record and store—

(i) the Mobile Subscriber Integrated Service Digital Network number (MSISDN-number) of the customer;

(ii) the International Mobile Equipment Identity number (IMEI-number)

of the cellular phone that is used; and

(iii) the full names, identity number reflected in the identification document and residential address, and, if applicable, the business address of the customer who requests that a SIM-card be activated or that a cellular phone be allowed to be used with a SIM-card.;
and

(iv) in the case of a customer who is not a South African citizen or is not lawfully or permanently resident in the Republic, also the country of origin and the date of birth.

(c) For the purposes of subparagraph (b), a telecommunication service provider must—

- (i) verify the full names and identity number of a customer with reference to his or her identification document; and
- (ii) require a customer to submit documentation in which his or her addresses are identified to the satisfaction of the telecommunication service provider, including a valid television licence, a recent motor vehicle licence document, a municipal rates and taxes invoice, a bank statement or an affidavit, relating to the address of the customer, of a person who knows the customer .

OR

require a customer to submit documentation of less than three months old which can reasonably be expected to achieve

verification of that person's addresses, which may include –

- (i) a bank statement;
- (ii) a lease, rental or credit sale agreement;
- (iii) a telephone or cellular phone account;
- (iv) a municipal rates and taxes account;
- (v) a valid television licence;
- (vi) an insurance policy; and
- (vii) official motor vehicle licence documentation,
- (d) A telecommunication service provider must ensure

that–

- (i) the process contemplated in paragraph (b);
- (ii) the information recorded and stored in terms of that paragraph; and
- (iii) the facility in or on which the information is recorded and stored,
are secure and only accessible to persons specifically designated by that
telecommunication service provider in accordance with the criteria that
may be determined by the Minister .
- (b) — Section 40(2), (3) and (4) applies with the necessary changes in
respect of a telecommunication service provider referred to in paragraph
(a).

(ed) A telecommunication service provider who
provides a mobile cellular service shall not allow service continuation on
its network , other than allowing network access to emergency calls,
customer care calls and calls for the purpose of compliance with

paragraph (a), in respect of any SIM-card or cellular phone of which the particulars are not if the information in paragraph (b) has not been recorded and stored at the expiry of the 12 month period referred to in paragraph (a), unless there is full compliance with that paragraph.

(de) Notwithstanding subsection (1) of section 39, subsections (3)(a) and (b) and (4) of that section apply with the necessary changes in respect of a telecommunication service provider who provides a mobile cellular telecommunication service: Provided that the requirement contemplated in section 39(3)(c) should be read as a reference to the identity number of that person and not a copy of the identification document.

(f) A telecommunication service provider who knows or suspects that an identity document submitted for verification as contemplated in paragraph (c) is falsified, must immediately report the knowledge or suspicion to the nearest police station."

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Insertion of section 62A to Act 70 of 2002

5. The following section is hereby inserted after section 62 of the principal Act:

"Determination of tariffs

62A. The Minister may, at the request of any telecommunication service providers who provides a mobile cellular telecommunication service determine uniform tariff of compensation payable by the telecommunication service providers who provides a mobile cellular telecommunication service to persons utilised to record and store the information provided for in sections 40 and 62(6) of the Act."

Short title and commencement

~~5.~~ 6. This Act is called the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Act, 2006, and comes into operation on 30 June 2006 or on such earlier date as the President may determine by Proclamation in the *Gazette*.