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REPUBLIC OF SOUTH AFRICA

**REGULATION OF INTERCEPTION OF  
COMMUNICATIONS AND PROVISION  
OF COMMUNICATION-RELATED  
INFORMATION AMENDMENT BILL,  
2006**

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in  
Government Gazette No. 28807 of 5 May 2006)  
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 9—2006]

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## 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 Parliament 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 "Agency" of the following definitions:

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

'address' means the particulars –

(i) of where a person lives, works or where his or her mail is delivered;

(ii) of where a person's business is situated;

(iii) of where a family member of a person lives or works; or

(iv) of an institution or business, including a school, church or shop, where a person is well known;";

## OPTION 2

'address' means the residential address of a person, or where no residential address is available –

(i) the address where a person works;

- (ii) the address where a person's business is situated;
- (iii) the address where a family member of a person resides; or
- (iv) any address in a rural area, including that of a school, church or retail store, where a person is well known;";

(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

OPTION:

(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. or

Option 2:

(c) a person who is not related to another person as contemplated in paragraph (a), but who exercises parental responsibility over such other person."

(c) by the substitution for the definition of "identification document" of the following definition:

"identification document' means, in the case of a person who is-

(a) a South African citizen or is lawfully and permanently resident in the Republic and has attained the age of 16 years –

(i) an identity card or temporary identity certificate as defined in the Identification Act;

(ii) a green, bar-coded identity document issued in accordance with the Identification Act, 1986 (Act No. 72 of 1986), until such identity document is replaced by an identity card as contemplated in section 25 of the Identification Act; ~~or~~

(iii) a South African passport as defined in the South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994);

- (iv) a {valid} driving licence as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996)<sup>1</sup>; or
- (v) an identity document issued in accordance with the Population Registration Act, 1950 (Act No. 30 of 1950), until such identity document is replaced by an identity card as contemplated in section 25 of the Identification Act;
- (b) ~~a South African citizen or is lawfully and permanently resident in the Republic and has not attained the age of 16 years, a birth certificate referred to in section 13 of the Identification Act; and~~
- (c) not a South African citizen or is not permanently resident in the Republic –
  - (i) ~~a travel document as defined in the South African Passports and Travel Documents Act, 1994; or~~
  - (ii) a passport or travel document as contemplated in paragraphs (b), (c) and (d) of the definition of ‘passport’ in the Immigration Act, 2002 (Act No. 13 of 2002);

OPTION

- (iii) a valid/unexpired identity document issued to a refugee in terms of section 30 of the Refugees Act, 1998 (Act 130 of 1998)”

(d) by the insertion after the definition of “identification document” of the following definition:

“‘identity number’ means –

- (a) in the case of person who is a South African citizen or who is lawfully and permanently resident in the Republic, the number referred to as the identity number in the documents contemplated in paragraph (a) the definition of ‘identification document’ or the number referred to as the passport number in the document contemplated in paragraph (a)(iii) of the definition of ‘identification

<sup>1</sup> It should be noted that only the initials of a person appear on a driving licence and in terms of section 40(2) the full names of a person are required.



document' ; and

- (b) in the case of a person who is not a South African citizen or who is not permanently resident in the Republic, the number referred to as the passport number in the document contemplated in paragraph (c) of the definition of 'identification document';

**Option**

the number referred to as the identity number in an identity document issued to a refugee as contemplated in paragraph (c) of the definition of 'identification document'.

**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 services provider who provides a mobile cellular 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).

OPTION:

(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;
- (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 and residential, business and postal addresses of the person who requests that a SIM-card be activated or that a cellular phone be allowed to be used with a SIM-card.

OPTION:

(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~~ **person who requests that a SIM-card be activated on the network telecommunication system of a telecommunication service provider;**

OPTION:

- (a) the Mobile Subscriber Integrated Service Digital Network number (MSISDN number) associated with the SIM-card;

OPTION:

- (a) the Mobile Subscriber Integrated Service Digital Network number (MSISDN number) of the SIM-card /that is to be activated at the request of a person who requires that a telecommunication service be provided/ **person who requests the provision of a telecommunication service;**

OPTION:

- (a) the Mobile Subscriber Integrated Service Digital Network number (MSISDN number) of the SIM-card that is to be activated by a **person who requests that a telecommunication service be provided;**
- (b) the international mobile equipment identity number (IMEI number) of the cellular phone that is to be used; and
- (c) the full names, **/initials and surname/first name, further initials , if necessary, and surname,** identity number ~~reflected in the identification document~~ and **at least one residential address, and, if**

~~applicable, the business and postal addresses~~ of the person who requests that a SIM-card referred to in subsection (1)(a) be activated or that a cellular phone referred to in subsection (1)(b) be allowed on the network telecommunication system of a telecommunication service provider ~~to be used with a SIM-card;~~

- (d) in the case of a person who is not a South African citizen or who is not lawfully or permanently resident in the Republic, also the country /where the passport was issued/ of origin and date of birth.

OPTION:

- (c) in the case of a person who is –

(i) a South African citizen or is permanently resident in the Republic, the full names/initials and surname/first name, further initials and surname, identity number ~~reflected in the identification document~~ and at least one residential address, and, if applicable, the business and or postal addresses of the person who requests that a SIM-card referred to in subsection (1)(a) be activated or that a cellular phone referred to in subsection (1)(b) be allowed on the network telecommunication system of a telecommunication service provider ~~to be used with a SIM-card.~~

(ii) not a South African citizen or not permanently resident in the Republic, the full names, passport number, at least one address, country of origin and date of birth of the person who requests that a SIM-card referred to in subsection (1)(a) be activated or that a cellular phone referred to in subsection (1)(b) be allowed on the telecommunication system of a telecommunication service provider also the country of origin and date of birth.

OPTION:

(c) the full names,/initials and surname/first name, further initials and surname, identity number or passport number and at least one address of the person who requests that a telecommunication service be provided.

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

- (a) verify the full names and identity number of the person with reference to his or her identification document; and



- (b) require the person to submit documentation in which his or her addresses are identified to the satisfaction of the telecommunication service provider.

## OPTION:

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

- (a) verify the full names and identity number of the person with reference to his or her identification document; and
- (b) require the 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 or any other utility bill, account of a retailer or a bank statement.

## OPTION:

- (b) 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 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;
- (vii) a letterhead in the case of a juristic person; or
- (viii) official motor vehicle licence documentation.

## OPTION:

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

- (a) verify the full names and identity number of a person by comparing these particulars with an identification document of that person; and
- (b) verify the address referred to in subsection (2)(c) by comparing these particulars with information that can reasonably be expected to achieve such verification, which may include -
- (i) a bank statement;
- (ii) a lease, rental credit sale agreement;
- (iii) a telephone or cellular phone account;