

- (iv) a municipal rates and taxes account;
- (v) a valid television licence;
- (vi) an insurance policy; or
- (vii) official motor vehicle licence documentation.

OPTION:

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

- (a) verify the identity of the person with reference to his or her identification document; and
- (b) require the person to submit documentation /of not older than three months/ in which his or her address -
 - (i) contemplated in subparagraphs (i) or (ii) in the definition of 'address' is identified to the satisfaction of the telecommunication service provider, including a valid television license, a recent motor vehicle license document, a municipal rates and taxes invoice or any other utility bill, account of a retailer or a bank statement;
 - (ii) contemplated in subparagraphs (iii) or (iv) in the definition of 'address' is identified by means of an affidavit to the satisfaction of the telecommunication service provider, who must also verify the identity and address of the deponent as contemplated in paragraph (a) and (b)(i).

(4) A telecommunication service provider must ensure that

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- (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.

OPTION:

(4) A telecommunication service provider must ensure that

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- (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 criteria that may be

determined by the Minister, after consultation with the Cabinet member responsible for communications.

OPTION:

(4) A telecommunication service provider must ensure that –

- (a) the process contemplated in subsection (2); and
- (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 the Minister may, after consultation with the Cabinet member responsible for communications and the telecommunication service providers, determine.

(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, must –

- (a) obtain from such person a document stating his or her –
 - (i) full names;
 - (ii) identity number; and
 - (iii) residential, business and postal addresses;
- (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 telecommunications 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).

OPTION:

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

- (a) obtain from such person a document stating his or her ~~notify the telecommunication service provider of –~~
 - (i a) the full names; ~~(ii)~~ and identity number of both persons; and

- (iii) the residential and, if applicable, the business and postal addresses of the person who is to receive the cellular phone or the SIM-card.;
- ~~(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), update the information recorded and stored in terms of subsection (2).

OPTION:

- (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).

OPTION FOR SUBSECTIONS (5) AND (6):

(5) From the date of commencement of this section, if a customer sells or, in any other manner, provides/disposes of a cellular phone or a SIM-card to another person, other than a family member, he or she must immediately notify the telecommunication service provider on which telecommunication system the cellular phone and SIM-card is used, thereof.

(6) A telecommunication service provider must, on receipt of notice contemplated in subsection (5), de-activate the SIM-card until such time as the information of the person who is to receive the cellular phone and SIM-card is recorded and stored in accordance with 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.

OPTION:

(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) must be construed as a reference to the identity number of that person and not a copy of the identification document.

OPTION:

(7) (a) Notwithstanding subsection (1) of section 39, subsections (3)(a) and (b) and (c) and (4) of that section apply with the necessary changes in respect of a telecommunication service provider who provides a mobile cellular telecommunication service.

(b) For the purposes of the application of section 39(3)(c), the furnishing of the identity or other unique number appearing on the identification document shall suffice.

OPTION:

(7) An applicant may, for purposes of making an application for the issuing of a direction, in writing, request a telecommunication service provider to –

- (a) confirm that the person specified in the request is a customer of that telecommunication service provider concerned; and
- (b) provide the applicant with the information recorded and stored in terms of subsection (2).

(8) A telecommunication service provider who receives a request referred to in subsection (7) must immediately comply with that request if the person specified in the request is a customer of the telecommunication service provider concerned.

(8) A telecommunication service provider who knows or suspects/reasonably suspects or knows/ that an identity document submitted for verification as contemplated in subsection (3) is falsified false, must immediately report the knowledge or suspicion thereof to the nearest police station/forthwith/ within 48 hours/14 days.

OPTION:

(8) If a reasonable person in the position of the employee or agent of the telecommunication service provider, in the application of subsection (3), would have suspected that the information

provided to him or her was false, the employee or agent must report the matter to a police official at any 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 section 62(6)(a), (b) or (c) 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 or an employee or agent of the 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 R2000~~ or to imprisonment for a period not exceeding three months.

OPTION:

(3C) Any employee or agent of a telecommunication service provider contemplated in section 40(8) who fails to make a report as required by that section, ~~within 14 days, after receiving the information,~~ is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.”; and

(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”.

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 recorded and stored in terms of section 40.

OPTION:

(a) A telecommunication service provider who provides a mobile cellular telecommunications 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 referred to in paragraph (b) if the information in question has not already been recorded and stored in terms of section 40.

(b) Section 40(2), (3) and (4) applies with the necessary changes in respect of a telecommunication service provider referred to in paragraph (a).

OPTION:

(b) Section 40(2), (3) and (4) applies with the necessary changes in respect of a telecommunication service provider referred to in paragraph (a).

OPTION:

(b) A telecommunication service provider must, subject to paragraph (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 SIM-card that is to be activated ~~customer~~ person who requests that a SIM-card be activated or that a cellular phone be allowed on the network of a telecommunication service provider;
- (ii) the international mobile equipment identity number (IMEI number) of the cellular phone that is to be used; and
- (iii) 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.

OPTION:

- (iii) the full names, identity number and at least one address, which can be either a residential, business or postal address 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; and
- (iv) 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 of origin and date of birth.

(c) For the purposes of paragraph (b)(iii), a telecommunication service provider must –

- (i) verify the full names and identity number of the person with reference to his or her identification document; and
- (ii) 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 or an affidavit, relating to the address of the customer, of a person who knows the customer.

OPTION:

- (ii) 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 –
 - (aa) a bank statement;
 - (bb) a lease, rental credit sale agreement;
 - (cc) a telephone or cellular phone account;
 - (dd) a municipal rates and taxes account;
 - (ee) a valid television licence;
 - (ff) an insurance policy;
 - (gg) a letterhead in the case of a juristic person; or
 - (hh) official motor vehicle licence documentation.

OPTION:

(c) For the purposes of paragraph (b)(iii), a telecommunication service provider must –

- (i) verify the full names and identity number of a person by comparing these particulars with an identification document of that person; and
- (ii) verify the address referred to in paragraph (b)(iii) by comparing these particulars with information that can reasonably be expected to achieve such verification, which may include –
 - (aa) a bank statement;
 - (bb) a lease, rental credit sale agreement;
 - (cc) a telephone or cellular phone account;
 - (dd) a municipal rates and taxes account;
 - (ee) a valid television licence;
 - (ff) an insurance policy; or
 - (gg) 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 criteria that may be determined by the Minister.

OPTION:

(d) A telecommunication service provider must ensure that –

- (i) the process contemplated in paragraph (b); and
 - (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 the Minister may, after consultation with the telecommunication services, determine.

(c) A telecommunication service provider who provides a mobile cellular service shall not allow service continuation, 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 recorded and stored at the expiry of the 12-month period referred to in paragraph (a), unless there is full compliance with that paragraph.

OPTION:

(ee) 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 referred to 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.

(d) 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.

OPTION:

(ef) 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) must be construed as a reference to the identity number of that person and not a copy of the identification document.

OPTION:

(g) Notwithstanding subsection (1) of section 39, subsections (3)(a) and (b) and (c) and (4) of that section apply with the necessary changes in respect of a telecommunication service provider who provides a mobile cellular telecommunication service.

(h) For the purposes of the application of section 39(3)(c), the furnishing of the identity or other unique number appearing on the identification document shall suffice.

OPTION:

(g??) An applicant may, for purposes of making an application for the issuing of a direction, in writing, request a telecommunication service provider to –

(i) confirm that the person specified in the request is a customer of

that telecommunication service provider concerned; and
 (ii) provide the applicant with the information recorded and stored in terms of paragraph (?).

(?) A telecommunication service provider who receives a request referred to in paragraph (?) must immediately comply with that request if the person specified in the request is a customer of the telecommunication service provider concerned.

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

OPTION:

(?) If a reasonable person in the position of the employee or agent of the telecommunication service provider, in the application of paragraph (?), would have suspected that the information provided to him or her was false, the employee or agent must report the matter to a police official at any police station."

Insertion of section 62A in Act 70 of 2002

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

"Determination of tariffs

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

Short title and commencement

56. 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*.