

REPUBLIC OF SOUTH AFRICA

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

*(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]

ISBN 0 621 36264 6

No. of copies printed 1 800

- (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. 5
- (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. 10
- (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 15
- (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.
- (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— 20
- (a) obtain from such person a document stating his or her—
- (i) full names;
- (ii) identity number; and
- (iii) residential, business and postal addresses; 25
- (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— 30
- (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). 35
- (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.”. 40

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: 45
- “(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: 50
- “(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
- (c) by the deletion in subsection (5) of the word “or” at the end of paragraph (b) 55 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. 5

(b) Section 40(2), (3) and (4) applies with the necessary changes in respect of a telecommunication service provider referred to in paragraph (a). 10

(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. 15

(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.”. 20

Short title and commencement

5. 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*. 25

**MEMORANDUM ON THE OBJECTS OF THE REGULATION OF
INTERCEPTION OF COMMUNICATIONS AND PROVISION OF
COMMUNICATION-RELATED INFORMATION AMENDMENT
BILL, 2006**

1. Background of Bill

- 1.1 The Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002) (“the Act”), regulates the interception of certain communications relating to serious crimes, the provision of certain communication-related information, applications to a designated judge to authorise interceptions, the execution of directions and entry warrants by law enforcement officers and the prohibition of telecommunication services which do not have the capability of being intercepted. The Act also creates offences and prescribes penalties for any contravention of its provisions. It also prescribes certain information pertaining to their clients that must be obtained and kept by telecommunication service providers should it be required for detecting or investigating serious crimes.
- 1.2 To give effect to the last-mentioned objective, sections 40 and 62(6) of the Act deal with the information that needs to be obtained and kept by persons who sell cellular phones and SIM-cards: Section 40 deals with the sale of these items after that section comes into operation and section 62(6) deals with the existing owners of cellular phones and SIM-cards. Sections 40 and 62 have not yet been put into effect.

2. Objects of Bill

- 2.1 The main object of this Bill is to amend sections 40 and 62(6) so as to spell out more clearly what information is required to be recorded and stored. The Bill also proposes to require service providers to keep updated information about SIM-cards and cellular phones. The provisions of the Bill can be explained more fully as follows:
- 2.2 Clause 1 seeks to amend section 1 of the Act by inserting a definition of “family member”, which phrase is used in section 40(5).
- 2.3 Clause 2 of the Bill seeks to substitute section 40 of the Act. The proposed section seeks to prohibit any telecommunication service provider who provides a mobile cellular service from activating a SIM-card or from allowing the use of any cellular phone on its telecommunication system unless the particulars of the SIM-card or cellular phone are recorded and stored. That section also sets out the details that have to be recorded and how it should be verified. The proposed section also seeks to require a service provider to ensure that the process of collecting the data, the facility where the information is to be stored and the information itself are secure and only accessible to persons designated by it. In terms of proposed section 40 an owner (called a “customer” in the Act) of a SIM-card or cellular phone is also required to obtain certain information, should he or she provide any of the items to someone else. This information must be conveyed to the telecommunication service provider who is required to update the records relating to the SIM-card or cellular phone. The current provisions relating to information that law enforcement agencies may request from telecommunication service providers are retained.
- 2.4 Clause 3 of the Bill seeks to amend section 51 of the Act in order to criminalise non-compliance with sections 40 and 62(6) of the Act. Non-compliance by a customer to obtain and keep the information required by section 40 is also criminalised.

- 2.5 Clause 4 of the Bill seeks to amend section 62(6) of the Act. The proposed section serves as a transitional measure and requires telecommunication service providers to record and store, within a period of 12 months from the commencement of that section, particulars about all SIM-cards and cellular phones which have not yet been recorded in terms of section 40. The recording and storing must be done in the same way as provided for in section 40. Provision is also made for the service of a customer to be suspended if the particulars of the customer are not recorded and stored within 12 months from the commencement of that section. As in the case of section 40, the current provisions relating to information that law enforcement agencies may request from a telecommunication service provider are retained.

3. CONSULTATION

The following entities were consulted: Vodacom, MTN, Cell C, the South African Police Service, the South African National Defence Force, the National Intelligence Agency, the South African Secret Service and the National Director of Public Prosecutions.

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 0 621 36264 6