

REPUBLIC OF SOUTH AFRICA

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

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 33719 of 29 October 2010)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 38—2010]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE REËLING VAN ONDERSKEPPING VAN KOMMUNIKASIES EN VERSTREKKING VAN KOMMUNIKASIE-VERWANTE INLIGTING

*(Soos ingedien by die Nasionale Vergadering (voorgestelde artikel 75); verduidelikende
opsomming van Wetsontwerp in Staatskoerant No. 33719 van 29 Oktober 2010
gepubliseer)
(Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

[W 38—2010]

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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 extend the period within which the information of customers must be recorded and stored; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Amendment of section 62 of Act 70 of 2002, as amended by section 4 of Act 48 of 2008

1. Section 62 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, is hereby amended— 5

(a) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) Notwithstanding section 40(1), an electronic communication service provider who, prior to the date of commencement of this section, provides a mobile cellular electronic communications service must, **[within 18 months from the said date]** by 30 June 2011, record and store the information contemplated in section 40(2) in respect of all customers whose SIM-cards are activated on its system, if the information in question has not already been recorded and stored in terms of section 40.”; and 10 15

(b) by the substitution in subsection (6) for paragraph (d) of the following paragraph:

“(d) An electronic communication service provider shall not allow service continuation on its electronic communication system in respect of any activated SIM-card if the information referred to in paragraph (b) has not been recorded and stored **[at the expiry of the 18-month period contemplated in paragraph (a)]** by 30 June 2011.”. 20

Short title

2. This Act is called the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Act, 2010. 25

**MEMORANDUM ON THE OBJECTS OF THE REGULATION OF
INTERCEPTION OF COMMUNICATIONS AND PROVISION OF
COMMUNICATION-RELATED INFORMATION AMENDMENT
BILL, 2010**

1. PURPOSE OF BILL

The aim of the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Bill, 2010 (“the Bill”), is to amend the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002) (the “Act”), so as to extend the period within which the information of customers (historical customers), who were in possession of activated SIM-cards on 1 July 2009 when section 62(6) of the Act came into operation, must be recorded and stored by mobile cellular electronic communications service providers (Vodacom, MTN and Cell C) (“MCO’s”).

2. BACKGROUND

- 2.1 Section 62(6)(a) provides that the MCO’s must, within a period of 18 months from the date on which the section came into operation, record and store specified information in respect of historical customers of the MCO’s. The 18-month period within which the MCO’s must comply with this statutory obligation, expires on 31 December 2010 (the deadline for registration).
- 2.2 In terms of section 62(6)(d), an MCO shall not allow service continuation of any activated SIM-card on its electronic communication system after 31 December 2010 if the specified information is not recorded and stored in accordance with the provisions of the Act.
- 2.3 The MCO’s have indicated that, despite accelerated efforts, they will not be able to meet the deadline for registration imposed by section 62(6) because of problems they have experienced in practice with the registration process.

3. OBJECTS OF BILL

- 3.1 The Bill consists of two clauses. The object of clause 1 is to extend the deadline for registration. It amends section 62(6)(a) and (d), in order to provide that—
 - the MCO’s must, by 30 June 2011, record and store specified information in respect of customers who were in possession of SIM-cards when section 62(6) came into operation on 1 July 2009; and
 - an MCO shall not allow service continuation of any activated SIM-card on its electronic communication system after 30 June 2011 if the specified information is not recorded and stored in accordance with the provisions of the Act.

- 3.2 Clause 2 provides for the short title.

4. IMPLEMENTATION PLAN

None.

5. DEPARTMENTS AND PARTIES CONSULTED

The MCO’s, the South African Police Service, the South African Secret Service, the National Intelligence Agency, the South African National Defence Force, the Department of Communications and the National Director of Public Prosecutions were consulted on the proposed amendments. All comments received were taken into account in finalising the Bill.

6. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

None.

7. FINANCIAL IMPLICATIONS

None.

8. PARLIAMENTARY PROCEDURE

8.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this 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.

8.2 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.