

REPUBLIC OF SOUTH AFRICA

IDENTIFICATION BILL

(As introduced)

(MINISTER OF HOME AFFAIRS)

[B 60—97]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP IDENTIFIKASIE

(Soos ingedien)

(MINISTER VAN BINNELANDSE SAKE)

[W 60—97]

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BILL

To provide for the compilation and maintenance of a population register in respect of the population of the Republic; for the issue of identity cards and certain certificates to persons whose particulars are included in the population register; and for matters connected therewith.

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

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CHAPTER 1

Interpretation and Application of Act

Definitions

1. In this Act, unless the context otherwise indicates—
 - (i) “certificate” means a birth, death or marriage certificate referred to in section 13; (viii) 15
 - (ii) “Director-General” means the Director-General: Home Affairs; (ii)
 - (iii) “fingerprints” includes palmprints; (x)
 - (iv) “identity card” means the identity card referred to in section 14 and, unless clearly inconsistent with the provisions of this Act, includes an identity document referred to in section 26(1) or (2); (v) 20
 - (v) “Minister” means the Minister of Home Affairs; (vi)
 - (vi) “ordinary place of residence”, with reference to any person, means the place where he or she normally lives and to which he or she returns regularly after any period of temporary absence; (iii) 25
 - (vii) “population register” means the population register referred to in section 5; (i)
 - (viii) “prescribed” means prescribed by regulation; (xi)
 - (ix) “regulation” means a regulation made under section 23; (vii)
 - (x) “temporary identity certificate” means a temporary identity certificate issued under section 16; (ix) 30
 - (xi) “this Act” includes the regulations. (iv)

Utilising of information for purposes of Act

2. The information contained in the population register which existed immediately prior to the commencement of this Act, as well as the information contained in any document kept by the Director-General under any law, which are appropriate for the compilation and maintenance of the population register referred to in section 5(1), shall be utilised by the Director-General for that purpose. 35

Application of Act

3. This Act shall apply to all persons who are lawfully and permanently resident in the Republic. 40

Assignment of functions to officials

4. (1) The Director-General may—
 - (a) delegate any power granted to him or her by or under this Act, except the power referred to in this section, to an officer in the public service; and 45
 - (b) grant authority that a duty assigned to him or her in terms of this Act may be performed by such an officer.
- (2) A power so delegated and a duty so authorised shall be exercised or performed, subject to the directions of the Director-General, who may at any time withdraw such delegation or authority. 50

(3) A delegation under subsection (1)(a) does not prevent the Director-General from exercising the power in question himself or herself.

(4) A delegation or authority granted under a provision which is repealed by section 25 and which was in force immediately before the commencement of this Act, shall be deemed to have been granted under this section.

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CHAPTER 2

Population Register

Compilation and maintenance of population register

5. (1) The Director-General shall, as soon as practicable after the commencement of this Act, in the prescribed manner compile and thereafter maintain a population register for the Republic. 10

(2) The particulars required for the compilation and maintenance of the population register shall be obtained by the Director-General in the prescribed manner from the information referred to in section 2.

Access to population register

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6. Subject to the provisions of this Act, no person shall have access to the population register and no person shall record or amend any particulars in such register unless specifically authorised thereto by the Director-General.

Assignment of identity numbers

7. (1) The Director-General shall assign an identity number to every person whose particulars are included in the population register in terms of section 8. 20

(2) An identity number shall be compiled in the prescribed manner out of figures and shall, in addition to a serial, index and control number, consist of a reproduction, in figure codes, of the following particulars, and no other particulars whatsoever, of the person to whom it has been assigned, namely— 25

- (a) his or her date of birth and gender; and
- (b) whether or not he or she is a South African citizen.

Particulars to be included in population register

8. There shall in respect of any person referred to in section 3, be included in the population register the following relevant particulars available to the Director-General, namely— 30

- (a) his or her identity number referred to in section 7;
- (b) his or her surname, full forenames, gender, date of birth and the place or country where he or she was born;
- (c) if he or she has attained the age of 16 years, his or her ordinary place of residence and his or her postal address; 35
- (d) if he or she is a South African citizen but is not a citizen by birth or descent, the date of his or her naturalisation or registration as such a citizen, and, if he or she is an alien and was not born in the Republic, the date of his or her entry into the Republic, and the country of which he or she is a citizen; 40
- (e) the particulars of his or her marriage contained in the relevant marriage register or other documents relating to the contracting of his or her marriage, and such other particulars concerning his or her marital status as may be furnished to the Director-General;
- (f) a recent photograph of himself or herself, if he or she has attained the age of 16 years; 45
- (g) his or her fingerprints, if he or she has attained the age of 16 years;
- (h) particulars concerning passports and travel documents to leave the Republic granted to him or her;
- (i) after his or her death, the required particulars furnished when notice of his or her death was given, and on permanent departure from the Republic, the date 50

- of such departure, and particulars concerning the cancellation in the prescribed manner of his or her identity card or that card with the exception of the prescribed section thereof (if any); and
- (j) any other particulars determined by the Minister by notice in the *Gazette* as particulars which, subject to the conditions, exceptions or exemptions (if any) mentioned in the notice, shall be included in the register. 5

Photographs

9. Every person referred to in section 3 who has attained the age of 16 years shall at his or her own expense furnish two prescribed copies of a recent photograph of himself or herself to the Director-General when— 10
- (a) he or she applies for an identity card in terms of section 15; or
- (b) his or her identity card is required to be replaced by an improved one in terms of section 20(3)(a).

Fingerprints

10. Every person referred to in section 3 who has attained the age of 16 years shall, when he or she applies for an identity card, have his or her fingerprints taken in the prescribed manner so that it may be included in the population register. 15

Change of ordinary place of residence or postal address and furnishing of particulars to municipalities

11. (1) Every person whose name is included in the population register shall, if he or she attained the age of 16 years and an identity card has thereafter been issued to him or her, after any permanent change of his or her ordinary place of residence or his or her postal address, notify the Director-General within the prescribed time and in the prescribed manner of that change of residence or postal address. 20
- (2) If the Director-General on the ground of information at his or her disposal, is of the opinion that a permanent change has occurred in respect of the ordinary place of residence or the postal address of any person whose name is included in the population register, he or she may in the prescribed manner record the change in the population register, and shall thereupon notify the person concerned in the prescribed manner that the change has been recorded. 25 30
- (3) Every municipality may on the application for the rendering of services to residential premises within its area of jurisdiction, or the continued rendering of such service, make the rendering of such services subject to the furnishing by the applicant, or consumer, as the case may be, of particulars of— 35
- (a) an identity number;
- (b) an ordinary place of residence; and
- (c) a postal address,
- in the prescribed manner and within the prescribed time, in respect of all the occupants of the residential premises concerned who have already attained the age of 16 years and whose names have been included in the population register. 40
- (4) The particulars obtained in terms of subsection (3) shall be further dealt with as prescribed.

Verification of particulars

12. The Director-General may—
- (a) request any person to furnish the Director-General with proof of the correctness of any particulars which have been furnished in respect of such person in any document in terms of this Act; and 45
- (b) investigate or cause to be investigated any matter in respect of which particulars are required to be recorded in the population register.

Certificates of certain particulars included in population register

13. (1) The Director-General shall as soon as practicable after the receipt by him or her of an application, issue a birth, marriage or death certificate in the prescribed form after the particulars of such birth, marriage or death were included in the register in terms of section 8 of this Act. 5

(2) Any certificate issued in terms of subsection (1), shall in all courts of law be *prima facie* evidence of the particulars set forth therein.

CHAPTER 3

Identity Card

Identity Card 10

14. An identity card may contain only the following relevant particulars in respect of the person to whom it is issued, namely—

- (a) the particulars referred to in section 8(a), (b), (d) and (f);
- (b) the prescribed fingerprint or prints; and
- (c) any other particulars in the population register determined by the Minister by notice in the *Gazette* as particulars which, subject to the conditions, exceptions or exemptions (if any) mentioned in the notice, may be included in identity cards. 15

Application for identity card

15. (1) Any person referred to in section 3 who has attained the age of 16 years shall in the prescribed form and within the prescribed period apply for an identity card. 20

(2) Two copies of the photograph referred to in section 9, and the fingerprints referred to in section 10, shall accompany the application made under this section.

Temporary identity certificates

16. When any person has applied for an identity card, or has for official purposes lodged his or her identity card with the Director-General, the Director-General may on application issue to the person concerned whose particulars are included in the population register in terms of section 8, a temporary identity certificate in the prescribed form and manner, which, for the period and on the conditions mentioned therein, shall for the purpose of this Act be regarded as his or her identity card. 25 30

Proof of identity

17. (1) An authorised officer as defined in subsection (3) may at any time request any person reasonably presumed to have attained the age of 16 years to prove his or her identity without delay to that officer by the production of his or her identity card as defined in subsection (4). 35

(2) If it comes to the attention of an officer acting in the service of the Department of Home Affairs that a person referred to in section 3 who has attained the age of 16 years has not complied with the provisions of section 15(1), that officer shall take the prescribed steps to ensure that that person applies without delay for an identity card in terms of this Act. 40

(3) For the purposes of this section “authorised officer” means—

- (a) a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or
- (b) a person, or a member of a category of persons, designated by the Minister by notice in the *Gazette*, and who for the purpose of this section shall be deemed to be such a peace officer. 45

(4) For the purposes of subsection (1) “identity card” includes any other proof of identity issued by the State and on which the name and a photograph of the holder appear.

CHAPTER 4

*Offences and Penalties***Offences and penalties**

18. (1) No person shall—
- (a) for the purpose of this Act make or cause to be made a false statement; 5
 - (b) record any particulars in the population register, unless authorised thereto in terms of section 6;
 - (c) record any particulars in the population register which are in a material respect false, or fraudulently change any particulars therein;
 - (d) having come into possession of an identity card, a certificate or a temporary identity certificate belonging to another person, present it as his or her own or belonging to any person other than the person to whom it belongs, or fail to hand it over or send it as soon as practicable to the person to whom it belongs or to the Director-General; 10
 - (e) imitate, alter, deface, destroy or mutilate any identity card or any part thereof, certificate or temporary identity certificate, or cause it to be done or allow it to be done; 15
 - (f) allow an identity card, a certificate or a temporary identity certificate belonging to him or her or which is under his or her control, to come into the possession of any other person for an unlawful purpose; 20
 - (g) give out that any incorrect particulars in an identity card, a certificate or a temporary identity certificate are correct;
 - (h) at any time after a new identity card was issued to him or her, be in possession or regain possession of an identity card previously issued to him or her under this Act or under an Act repealed in terms of section 25, or without lawful cause fail to return for cancellation that previous identity card to the Director-General within 14 days after the new identity card was issued to him or her or after he or she regained possession of the previous identity card, as the case may be; or 25
 - (i) possess any identity card or any part thereof, a certificate or temporary identity certificate which has been imitated, altered, defaced or mutilated or any particulars of which are incorrect. 30
- (2) Any person who—
- (a) contravenes a provision of subsection (1);
 - (b) without lawful cause fails or refuses to comply with a request in terms of section 12(a) or 20(4); 35
 - (c) without lawful cause fails or refuses to comply with a provision of section 10, 11(1), 15(1) or 21(1); or
 - (d) contravenes a provision of section 20(1) or 22(1),
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years. 40
- (3) A court convicting any person of an offence referred to in subsection (2) shall, if applicable—
- (a) declare the document or certificate in respect of which the offence was committed to be forfeited to the State; and 45
 - (b) declare any instrument used for the purpose of or in connection with the commission of the offence, or the convicted person's rights thereto, to be forfeited to the State: Provided that such declaration shall not affect any rights which any person other than the convicted person may have to such instrument, if it is proved that such person did not know that it was being used or would be used for the purpose of or in connection with the commission of such offence, or that he or she could not prevent such use. 50
- (4) The provisions of section 35(2) and (4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall *mutatis mutandis* apply to any forfeiture in terms of subsection (3)(b) of this section. 55

Evidence and presumptions

19. (1) If in any criminal proceedings in relation to an offence in terms of this Act the question arises as to whether an identity card, or a particular identity card, issued to a particular person was issued to the accused, a document which purports to be an affidavit by a person alleging therein— 5

- (a) that he or she is officially concerned with the fingerprints in the population register, and that he or she is proficient in the identification of fingerprints;
- (b) that he or she received fingerprints certified by the person who took them to be the fingerprints of the accused; and
- (c) that he or she compared the fingerprints referred to in paragraph (b) with the fingerprints in the population register and by virtue of his or her proficiency has come to a conclusion in relation to the said question, 10

shall upon the mere production thereof be *prima facie* proof of the conclusion mentioned therein.

(2) If in any prosecution in terms of section 18(2) it is proved that any identity card or any part thereof, certificate or temporary identity certificate was imitated, altered, defaced, destroyed or mutilated, it shall be presumed, until the contrary is proved, that the relevant act was done by the person who possessed or used such document or certificate or who allowed it to be possessed or used by any other person. 15

CHAPTER 5

20

General Provisions

Correction, cancellation and replacement

20. (1) If—

- (a) an identity card does not reflect correctly the particulars of the person to whom it was issued, or contains a photograph which is no longer a recognizable image of that person; or 25
- (b) a temporary identity certificate or any certificate does not reflect correctly the particulars of the person to whom it was issued,

the person concerned or the guardian of the person to whom the card or certificate was issued, as the case may be, shall within the prescribed period hand over or send by registered post the identity card, temporary identity certificate or certificate, as the case may be, to the Director-General. 30

(2) If the identity card, temporary identity certificate or certificate referred to in subsection (1) is not handed over or sent in accordance with that subsection, the Director-General may in the prescribed manner obtain restoration thereof or seize it. 35

(3) If by virtue of this section the Director-General has obtained possession of—

- (a) an identity card, he or she shall, subject to section 16, without delay cancel it in the prescribed manner and, subject to sections 9 and 10, replace it with a corrected identity card; or
- (b) a temporary identity certificate or any certificate, he or she shall without delay— 40
 - (i) effect the necessary corrections directly on the temporary identity certificate or certificate, as the case may be, if in his or her opinion it can be done; or
 - (ii) in the prescribed manner cancel and replace it with a corrected temporary identity certificate or appropriate certificate, as the case may be. 45

(4) When it comes to the attention of the Director-General that an identity card has been issued to a person whose name is not required in terms of section 3 to be included in the population register, the Director-General shall request that person to return the identity card for cancellation. 50

Surrender or seizure of identity card of deceased person

21. (1) Any person who has in his or her possession a document being or purporting

to be an uncanceled identity card of a person who has died, shall within 30 days after the document came into his or her possession, hand over or send by registered post such document for cancellation to the Director-General.

(2) A document handed over or sent to the Director-General in terms of subsection (1), shall without delay after the receipt thereof be cancelled and destroyed in the prescribed manner and, unless a relative of the deceased person indicates in writing that he or she wants it. 5

(3) When it comes to the attention of the Director-General that any person is in possession of a document being or purporting to be an uncanceled identity card of a person who has died, he or she shall without delay seize that document, and thereupon the provisions of subsection (2) shall *mutatis mutandis* apply in respect of that document. 10

Secrecy

22. (1) Subject to the provisions of subsections (2) and (3), no person shall publish or communicate to any other person any information recorded in the population register, an identity card, a temporary identity certificate or any certificate which he or she acquired by virtue of his or her functions in terms of any law, except for the purposes of this Act, judicial proceedings or the performance of his or her functions in terms of any other law, and no person who came into possession of any such information which to his or her knowledge has been communicated to him or her in contravention of the provisions of this section, shall publish the information or communicate it to any other person. 15 20

(2) Notwithstanding the provisions of subsection (1), the Director-General may furnish any information in relation to a person whose name is included in the population register to—

- (a) any State department, municipality or statutory body for any of the purposes of that department, municipality or body; or 25
- (b) any person or any institution on behalf and on the written instruction of any person, who has applied therefor in writing with a full exposition of the purposes for which the information is required and who has paid the prescribed fees, if any, provided that the Director-General is satisfied that the information is required for the exercise or protection of any of the rights or interests of the person whose name is included in the population register, or that the furnishing of that information is in the public interest. 30

(3) (a) The Minister may on the request of any organisation, body, society or institution whose main activity is insurance business as defined in the Insurance Act, 1943 (Act No. 27 of 1943), or banking as contemplated in the Banks Act, 1990 (Act No. 94 of 1990), or any other organisation, body, society or institution, allow such organisation, body, society or institution, access to the population register, subject to the restrictions, conditions, exclusions and directives as may be prescribed. 35

(b) Any access allowed in terms of paragraph (a) shall be subject to such fees as prescribed. 40

Regulations

23. (1) The Minister may make regulations as to—

- (a) the issue of duplicate identity cards, temporary identity certificates, or other certificates, the circumstances under, and the conditions subject to, which they may be issued and the fees payable therefor; 45
- (b) the form of and the issue of certificates in respect of particulars contained in the population register or in an identity card, the purposes for which such certificates may be used and the evidential value thereof;
- (c) the making of special arrangements in connection with the inclusion of the names of persons in the population register in exceptional circumstances; 50
- (d) the issuing of instructions and the prescribing of forms by the Director-General which may be necessary for the effective execution of the provisions of this Act, 55

and in general, as to all matters which, in terms of this Act, are required or permitted to be prescribed or which he or she deems necessary or expedient to prescribe in order that the objects of this Act may be achieved.

(2) Any regulations made under subsection (1) may prescribe penalties of a fine or of imprisonment for a period not exceeding two years for any contravention thereof or failure to comply therewith.

(3) A regulation made under a provision repealed by section 25 and which was in force immediately before the commencement of this Act shall be deemed to have been made under this section. 5

(4) Any fees which may be prescribed under this Act shall be prescribed by the Minister with the concurrence of the Minister of Finance.

Reproduction of documents

24. (1) Notwithstanding anything to the contrary contained in any other law, the Director-General may, in respect of a person or class of persons determined by him or her, reproduce or cause to be reproduced any document from which the population register is compiled or maintained by means of any process which in his or her opinion accurately and durably reproduces such documents, and may preserve or cause to be preserved those reproductions in lieu of such documents. 10 15

(2) A reproduction referred to in subsection (1) shall, notwithstanding anything to the contrary contained in any other law, for all purposes be deemed to be the original document from which it was reproduced, and a copy of such reproduction which has been certified by the Director-General as a true copy, shall in any court of law be conclusive proof of the contents of the relevant original document. 20

Repeal and amendment of laws

25. The Identification Act, 1986 (Act No. 72 of 1986); Identification Amendment Act, 1991 (Act No. 21 of 1991); Identification Amendment Act, 1993 (Act No. 4 of 1993); and Identification Amendment Act, 1995 (Act No. 47 of 1995), are hereby repealed.

Transitional arrangements 25

26. (1) Notwithstanding the repeal of the laws referred to in section 25 the Director-General shall continue to issue identity documents in accordance with those laws until a date determined by the Minister by notice in the *Gazette*.

(2) (a) Any identity document issued in terms of an Act repealed by section 25, or which remain valid under a provision of such law, shall remain valid until an identity card is issued in terms of section 14 or until a date contemplated in paragraph (b). 30

(b) The Minister may by notice in the *Gazette* fix a date for the replacement of identity documents referred to in paragraph (a) and may make regulations regarding such replacement.

Short title and commencement 35

27. This Act shall be called the Identification Act, 1997, and shall come into operation on a date set by the President by proclamation.

MEMORANDUM ON THE OBJECTS OF THE IDENTIFICATION BILL, 1997

1. The Identification Act, 1986 (Act No. 72 of 1986), *inter alia* regulates the compilation and maintenance of the population register, as well as the issuing of identity documents.

2. The Home Affairs National Identity System (HANIS) project, which was approved by Cabinet during 1996, and given the “go-ahead” by the Portfolio Committee on Home Affairs, *inter alia* involves the substitution of the present identity document by an identity card.

3. The objectives of the HANIS project are—

3.1 to ensure that each qualifying inhabitant of South Africa will only be issued with one identity number by the Department of Home Affairs;

3.2 to provide an efficient identity verification service to any department or private organisation that needs to prove that a person is who he or she claims to be. In order to meet the needs of all interested parties this verification service must provide for at least three different levels of verification;

3.3 to issue every qualifying inhabitant of South Africa with a machine readable identity card, which will include a photograph and thumbprint of the applicant. The identity card will be used as the key to any RDP service, or any other service requiring positive verification of identity;

3.4 to ensure that the system will not be used for the identification of criminals, as a separate criminal system will be provided for by the South African Police Service; and

3.5 to provide sufficient security features, in order to prevent the forging, damaging or counterfeiting of an identity card.

4. In view of the implementation of the aforementioned project it was necessary to completely overhaul the Identification Act, 1986, and to introduce to Parliament a measure—

4.1 that will comply with the much needed HANIS system; and

4.2 that provide for a new identity card as well as the gradual phasing out of the present identity document.

5. Apart from the objects mentioned in the preceding paragraph, the Bill, *inter alia*, also proposes measures with the view to—

5.1 protecting the integrity of the population register;

5.2 empowering the Minister to allow restricted access to the population register by insurance companies, banking institutions, and other organisations, bodies, societies or institutions and at the same time ensuring that the privacy of individuals whose particulars are included in the population register is being protected;

5.3 providing for a more effective method of proving one’s identity to peace and other authorised officers. Failing to produce an identity card or document on demand will, however, not be an offence; and

5.4 doing away with outdated measures contained in the Identification Act, 1986.

Interested parties consulted

1. All government departments were consulted on the HANIS project.

2. The Department is also constantly in contact with *inter alia* insurance companies and financial institutions, who have a vested interest in the verification of the identity of individuals.

In the opinion of the Department and the State Law Advisers this Bill should be dealt with in terms of section 75 of the Constitution of the Republic of South Africa, 1996.