Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER**
**SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 210

# HOUSE BILL 2726

AN ACT

CHANGING THE DESIGNATION OF TITLE 44, CHAPTER 9, ARTICLE 20, ARIZONA REVISED STATUTES, TO "TELEPHONE, UTILITY AND COMMUNICATION SERVICE RECORDS"; AMENDING SECTIONS 44-1376, 44-1376.01, 44-1376.02 AND 44-1376.04, ARIZONA REVISED STATUTES; RELATING TO TELEPHONE, UTILITY AND COMMUNICATION SERVICE RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Heading change

The article heading of title 44, chapter 9, article 20, Arizona Revised Statutes, is changed from "TELEPHONE RECORDS" to "TELEPHONE, UTILITY AND COMMUNICATION SERVICE RECORDS".

Sec. 2. Section 44-1376, Arizona Revised Statutes, is amended to read:

44-1376. Definitions

In this article, unless the context otherwise requires:

1. "COMMUNICATION SERVICE RECORD" INCLUDES SUBSCRIBER INFORMATION, INCLUDING NAME, BILLING OR INSTALLATION ADDRESS, LENGTH OF SERVICE, PAYMENT METHOD, TELEPHONE NUMBER, ELECTRONIC ACCOUNT IDENTIFICATION AND ASSOCIATED SCREEN NAMES, TOLL BILLS OR ACCESS LOGS, RECORDS OF THE PATH OF AN ELECTRONIC COMMUNICATION BETWEEN THE POINT OF ORIGIN AND THE POINT OF DELIVERY AND THE NATURE OF THE COMMUNICATION SERVICE PROVIDED, SUCH AS CALLER IDENTIFICATION, AUTOMATIC NUMBER IDENTIFICATION, VOICE MAIL, ELECTRONIC MAIL, PAGING OR OTHER SERVICE FEATURES. COMMUNICATION SERVICE RECORDS DO NOT INCLUDE THE CONTENT OF ANY STORED ORAL, WIRE OR ELECTRONIC COMMUNICATION OR A TELEPHONE RECORD.

~~1.~~ 2. "Procure" means to obtain by any means, including electronically, in writing or in oral form, with or without consideration.

3. "PUBLIC UTILITY" INCLUDES PUBLIC SERVICE CORPORATIONS, MUNICIPALLY OWNED SYSTEMS AND DISTRICTS SUBJECT TO ARTICLE XIII, SECTION 7, CONSTITUTION OF ARIZONA, POWER DISTRICTS, ELECTRICAL DISTRICTS, AGRICULTURAL IMPROVEMENT DISTRICTS OR IRRIGATION AND WATER CONSERVATION DISTRICTS ESTABLISHED PURSUANT TO TITLE 48, CHAPTER 11, 12, 17 OR 19.

4. "PUBLIC UTILITY RECORD" INCLUDES CUSTOMER INFORMATION, INCLUDING NAME, BILLING OR INSTALLATION ADDRESS, LENGTH OF SERVICE, PAYMENT METHOD OR ANY OTHER PERSONAL IDENTIFYING INFORMATION.

~~2.~~ 5. "Telephone" means any device that is used by a person for voice communications in connection with the services of a telephone company whether the voice communications are transmitted in analog, data or any other form.

~~3.~~ 6. "Telephone company" means any person that provides commercial telephone services to a customer, irrespective of the communications technology that is used to provide the service, including:

(a) Traditional wire line or cable telephone service.

(b) Cellular, broadband personal communication systems or other wireless telephone service.

(c) Microwave, satellite or other terrestrial telephone service.

(d) Voice over internet telephone service.

~~4.~~ 7. "Telephone record" means information that is:

(a) Retained by a telephone company and that relates to the telephone number dialed by the customer or the incoming number of the call directed to a customer or other data related to such calls typically contained on a customer telephone bill, including the time the call started and ended, the duration of the call, the time of day the call was made, any charges applied

and any information that indicates the location from which or to which the call was made.

(b) MADE AVAILABLE TO A TELEPHONE COMPANY BY A CUSTOMER SOLELY BY VIRTUE OF THE RELATIONSHIP BETWEEN THE TELEPHONE COMPANY AND THE CUSTOMER. Telephone record does not include any information collected and retained by or on behalf of customers using caller identification or similar technology.

Sec. 3. Section 44-1376.01, Arizona Revised Statutes, is amended to read:

44-1376.01. Unauthorized or fraudulent procurement, sale or receipt prohibited; procedures to protect against disclosure

A. A person shall not do any of the following:

1. Knowingly procure, attempt to procure, solicit or conspire with another to procure a PUBLIC UTILITY RECORD, A telephone record OR COMMUNICATION SERVICE RECORD of any resident of this state without the authorization of the customer to whom the record pertains or by fraudulent, deceptive or false means.

2. Knowingly sell or attempt to sell a PUBLIC UTILITY RECORD, A telephone record OR COMMUNICATION SERVICE RECORD of any resident of this state without the authorization of the customer to whom the record pertains.

3. EXCEPT FOR THE ARIZONA CORPORATION COMMISSION IN THE PERFORMANCE OF ITS OFFICIAL DUTIES, receive a PUBLIC UTILITY RECORD, A telephone record OR COMMUNICATION SERVICE RECORD of any resident of this state knowing that the record has been obtained without the authorization of the customer to whom the record pertains or by fraudulent, deceptive or false means.

B. ~~Telephone companies~~ ENTITIES THAT MAINTAIN COMMUNICATION SERVICE RECORDS, TELEPHONE RECORDS OR PUBLIC UTILITY ~~that maintain telephone~~ records of a resident of this state shall establish reasonable procedures to protect against unauthorized or fraudulent disclosure of such records that could result in a substantial harm or inconvenience to any customer. No private right of action is authorized under this subsection. For the purposes of this subsection, a telephone company's procedures are reasonable if the telephone company complies with the provisions governing customer proprietary network information in section 222 of the communications act of 1934 (47 United States Code section 222), as amended, and regulations promulgated under that section.

C. ANY PERSONAL INFORMATION THAT IS CONTAINED IN A TELEPHONE RECORD, PUBLIC UTILITY RECORD OR COMMUNICATION SERVICE RECORD THAT IS OBTAINED IN VIOLATION OF THIS ARTICLE IS INADMISSIBLE AS EVIDENCE IN ANY JUDICIAL, ADMINISTRATIVE, LEGISLATIVE OR OTHER PROCEEDING UNLESS THAT INFORMATION IS OFFERED AS PROOF IN AN ACTION OR PROSECUTION PURSUANT TO THIS ARTICLE OR IS OTHERWISE AUTHORIZED BY LAW.

Sec. 4. Section 44-1376.02, Arizona Revised Statutes, is amended to read:

44-1376.02. Application

A. This article does not prevent any action by a law enforcement agency or any officer, employee or agent of a law enforcement agency to obtain PUBLIC UTILITY RECORDS, telephone records OR COMMUNICATION SERVICE RECORDS in connection with the performance of the official duties of the agency.

B. This article does not prohibit a PUBLIC UTILITY, A telephone company OR AN ENTITY THAT MAINTAINS COMMUNICATION SERVICE RECORDS from obtaining, using, disclosing or permitting access to any PUBLIC UTILITY RECORD, telephone record OR COMMUNICATION SERVICE RECORD, either directly or indirectly through its agents:

1. As otherwise authorized by law.

2. With the lawful consent of the customer or subscriber.

3. As may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service or to protect users of those services and other carriers from fraudulent, abusive or unlawful use of or subscription to those services.

4. To a governmental entity, if the PUBLIC UTILITY, telephone company OR ENTITY THAT MAINTAINS COMMUNICATION SERVICE RECORDS reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information.

5. To the national center for missing and exploited children in connection with a report submitted under the victims of child abuse act of 1990 (42 United States Code section 13032).

C. THIS ARTICLE DOES NOT PROHIBIT A PUBLIC UTILITY, A TELEPHONE COMPANY OR AN ENTITY THAT MAINTAINS COMMUNICATION SERVICE RECORDS FROM DISCLOSING OR PERMITTING ACCESS TO ANY PUBLIC UTILITY RECORD, TELEPHONE RECORD OR OTHER COMMUNICATION SERVICE RECORD EITHER DIRECTLY OR INDIRECTLY THROUGH ITS AGENTS TO THE ARIZONA CORPORATION COMMISSION FOR USE IN THE PERFORMANCE OF ITS DUTIES.

~~C.~~ D. This article does not apply to or expand on the obligations and duties of any PUBLIC UTILITY, telephone company OR ENTITY THAT MAINTAINS COMMUNICATION SERVICE RECORDS or its agents, employees or contractors to protect PUBLIC UTILITY RECORDS, telephone records OR COMMUNICATION SERVICE RECORDS beyond those otherwise established by federal and state law, including the provisions governing customer proprietary network information in section 222 of the communications act of 1934 (47 United States Code section 222), as amended, and regulations promulgated under that section.

~~D.~~ E. This article does not apply to a PUBLIC UTILITY, A telephone company OR AN ENTITY THAT MAINTAINS COMMUNICATION SERVICE RECORDS or its agents or representatives who reasonably and in good faith act pursuant to this article, notwithstanding any later determination that the action was not authorized.

1 Sec. 5. Section 44-1376.04, Arizona Revised Statutes, is amended to
2 read:
3 44-1376.04. Civil causes of action
4 A. In a civil action, a customer whose COMMUNICATION SERVICE RECORDS,
5 telephone RECORDS OR PUBLIC UTILITY records were procured, sold or received
6 in violation of this article may recover from the person that committed the
7 violation the following relief:
8 1. Preliminary and other equitable or declaratory relief as may be
9 appropriate.
10 2. Damages equal to the sum of the actual damages suffered by the
11 plaintiff and any profits made by the violator as a result of the violation
12 but in no case shall a person entitled to recover receive less than one
13 thousand dollars.
14 3. Reasonable attorney fees and other litigation costs that are
15 reasonably incurred.
16 B. A civil action under this section may not be commenced more than
17 two years after the date on which the claimant first discovered or had a
18 reasonable opportunity to discover the violation.

APPROVED BY THE GOVERNOR MAY 14, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 14, 2007.