

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 202

HOUSE BILL 2542

AN ACT

AMENDING SECTION 40-202; ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-5034.01; AMENDING TITLE 42, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-6007; RELATING TO TELECOMMUNICATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 40-202, Arizona Revised Statutes, is amended to
3 read:

4 40-202. Supervising and regulating public service corporations;
5 telecommunications promotion; competitive electricity
6 market; rules; duty to comply; exemptions for
7 electric generation; unlawful practice

8 A. The commission may supervise and regulate every public service
9 corporation in the state and do all things, whether specifically designated
10 in this title or in addition thereto, necessary and convenient in the
11 exercise of such THAT power and jurisdiction. In supervising and regulating
12 long-distance telecommunications corporations, the commission shall encourage
13 competition and growth in the telecommunications industry and promote
14 economic development and investment in new telecommunications technologies,
15 infrastructure and services. In furtherance of this policy, the commission
16 shall establish procedures and standards for identifying and regulating
17 competitive long-distance telecommunications markets. When the commission
18 determines that a long-distance telecommunications market is competitive, it
19 shall establish appropriate supervisory and regulatory treatment for
20 competitive long-distance telecommunications markets as distinguished from
21 noncompetitive telecommunications markets. IN IMPOSING ANY ASSESSMENTS OR
22 OTHER CHARGES ON MOBILE TELECOMMUNICATIONS SERVICE PROVIDERS, THE COMMISSION
23 SHALL COMPLY WITH THE REQUIREMENTS OF THE MOBILE TELECOMMUNICATIONS SOURCING
24 ACT (P.L. 106-252; 114 STAT. 626; 4 UNITED STATES CODE SECTIONS 116 THROUGH
25 126).

26 B. It is the public policy of this state that a competitive market
27 shall exist in the sale of electric generation service. In order to
28 transition to competition for electric generation service, the commission's
29 authority is confirmed to:

30 1. Open the service territories of public service corporations, except
31 foreign nonprofit, member owned cooperative corporations, to competitive
32 access by other electricity suppliers or providers of other services not
33 later than December 31, 1998 for at least twenty per cent of their 1995
34 retail load, at least fifteen per cent of which shall be reserved for
35 customers in the residential customer class, and open their entire service
36 territory to competition not later than December 31, 2000.

37 2. Establish reasonable requirements for certificating and regulating
38 electricity suppliers that are public service corporations.

39 3. Maintain the current service territories of public service
40 corporations and prohibit a public service corporation from providing
41 electric distribution service in the service territories of other electric
42 distribution utilities in this state.

43 4. Require an electric distribution utility that is a public service
44 corporation and that has been granted a service territory through a
45 certificate of convenience and necessity or a contract and agreement among

1 utilities to provide other services for the service territory that the
2 electric distribution utility serves as follows:

3 (a) Beginning on December 31, 1998 through December 31, 2000, billing
4 and collections services shall be provided on a competitive basis for those
5 retail electric customers with loads of one megawatt and above that have
6 competitive electric generation service. After December 31, 2000 billing and
7 collections services shall be provided on a competitive basis for all retail
8 electric customers that have competitive electric generation service.

9 (b) Beginning on December 31, 1998 through December 31, 2000, metering
10 shall be provided on a competitive basis for those retail electric customers
11 with loads of one megawatt and above that have competitive electric
12 generation service. After December 31, 2000 metering shall be provided on
13 a competitive basis for all retail electric customers that have competitive
14 electric generation service. All meters shall meet or exceed existing
15 standards for safety, reliability and accuracy.

16 (c) By December 31, 1998 through December 31, 2000, meter reading
17 shall be provided on a competitive basis for those retail electric customers
18 with loads of one megawatt and above that have competitive electric
19 generation service. After December 31, 2000 meter reading shall be provided
20 on a competitive basis for all retail electric customers that have
21 competitive electric generation service.

22 5. Require the electric distribution utility that is a public service
23 corporation to act as the supplier of last resort for electric generation
24 service for every retail electric customer within its electric distribution
25 service territory whose annual usage is one hundred thousand kilowatt hours
26 or less if other electricity suppliers are unwilling or are unable to supply
27 electric generation service and whose electric generation service has been
28 discontinued through no fault of the retail electric customer.

29 6. Provide for the recovery of just and reasonable costs incurred by
30 the electric distribution utilities that are public service corporations for
31 supplying electric generation service under paragraph 5 of this subsection
32 through a distribution charge on retail customers whose annual usage is one
33 hundred thousand kilowatt hours or less.

34 7. Investigate complaints regarding the subsidization of competitive
35 services by any regulated rate or charge for any noncompetitive electric
36 service and impose appropriate sanctions for any such subsidization.

37 8. Except as provided for the recovery of stranded costs, including
38 costs associated with employee severance incurred as a direct result of
39 competition among electric suppliers, as ordered by the commission, not
40 consider the profits or losses associated with electric generation service
41 when regulating electric distribution service.

42 C. In supervising and regulating public service corporations, the
43 commission's authority is confirmed to adopt rules to:

44 1. Protect the public against deceptive, unfair and abusive business
45 practices, practices related to deposit requirements and reconnection fees,

1 intrusive and abusive marketing, deceptive or untrue advertising practices
2 and practices prohibited under subsection H of this section.

3 2. Prohibit a public service corporation that forms an affiliate for
4 the purposes of providing services that require a licensed contractor or has
5 employees perform these services, including but not limited to electrical,
6 heating, ventilation, air conditioning or plumbing or construction services,
7 from advertising these services in their billing statement or in other
8 mailings done by the electric distribution utility.

9 3. Provide that a separate authorization pursuant to paragraph 4 of
10 this subsection to change electricity supplier and plain language in
11 advertising and billing using uniform words and phrases that have the same
12 meanings so that customers can make accurate comparisons.

13 4. Provide that a separate written and dated authorization is required
14 for a change in a retail electricity supplier subject to the following:

15 (a) The authorization shall not contain any inducements.

16 (b) The authorization shall be in legible print with clear and plain
17 language confirming the rates, terms, conditions and nature of the service
18 to be provided.

19 (c) The authorization shall not state or suggest that the customer
20 take action to retain the customer's current electricity supplier.

21 (d) An electricity supplier that submits or executes a change in a
22 retail electricity customer's electricity supplier in violation of this
23 paragraph shall refund to the retail electricity customer the entire amount
24 of the customer's electricity charges attributable to electric generation
25 service from the electricity supplier for three months, or the period of the
26 unauthorized service, whichever is less.

27 (e) The authorization shall be in the same language as any promotional
28 or inducement materials provided to the retail electric customer.

29 (f) No box or container may be used to collect entries for sweepstakes
30 or a contest that, at the same time, is used to collect authorization by a
31 retail electric customer to change the customer's electricity supplier or to
32 subscribe to other services.

33 5. Provide that, notwithstanding any other law, customer information,
34 account information and related proprietary information are confidential
35 unless specifically waived by the customer in writing.

36 6. Ensure that public service corporations that employ the services
37 of a contractor for interior household energy service, either directly or
38 through any affiliate, require the contractors and subcontractors to be
39 licensed by the registrar of contractors and shall comply with all municipal
40 permit and inspection standards and applicable life safety codes. For the
41 purposes of this paragraph, "contractor" has the same meaning prescribed in
42 section 32-1101.

43 7. Permit the aggregation of loads by multiple customers.

44 D. In supervising and regulating public service corporations, it is
45 the public policy of this state that the most effective manner of

1 establishing just and reasonable rates for electricity is to permit electric
2 generation service prices to be established in a competitive market.

3 E. The commission shall order on a nondiscriminatory basis that public
4 service corporations open their distribution territories to competition by
5 public power entities to the same extent and under the same terms and
6 conditions as authorized electricity suppliers are granted access through
7 commission rules or orders.

8 F. Except as provided in subsection G of this section, during the
9 initial construction of a residential structure, electric and natural gas
10 facilities at a minimum shall be installed in and to the structure in a
11 manner that provides the retail energy consumer ultimately residing in the
12 structure with the capability to choose between electricity and natural gas
13 as an energy source for each appliance application.

14 G. A residential structure may be constructed without the installation
15 of any particular facilities if:

16 1. The structure is not located within the service territory of a
17 public service corporation certificated to furnish the associated energy
18 service.

19 2. Unless mandated otherwise by law or governmental regulation, the
20 public service corporation certificated to furnish the associated energy
21 notifies the contractor or owner that the extension of the facilities to the
22 structure is not economically feasible.

23 3. The public service corporation certificated to furnish a particular
24 energy service and the owner or contractor agree that the extension of the
25 facilities to the subdivision, to the structure or to any appliance
26 application would not be economically feasible or would otherwise be
27 inappropriate. In this case, the parties may agree to install no facilities
28 in the subdivision, to install service to any or all residential structures
29 without providing service to any appliance application or to install
30 facilities to some but not all appliance applications.

31 H. Unless mandated by law or a generally accepted industry code, a
32 person or entity, including municipal corporations and political
33 subdivisions, shall not engage in any practice that interferes with the
34 opportunity to have electric and natural gas facilities at a minimum
35 installed in and to an existing residential structure in a manner that
36 provides the retail energy consumer ultimately residing in the structure and
37 all subsequent retail energy consumers residing in the structure with the
38 capability to choose between electricity and natural gas as an energy source
39 for each appliance application. This subsection does not apply to reasonable
40 sales and marketing activities.

41 I. If a trench is provided by a contractor or a property owner for the
42 purpose of having utility facilities installed to a residential structure,
43 electric and natural gas facilities at a minimum shall be permitted to occupy
44 the trench if the installation of the facilities is completed in compliance
45 with generally accepted industry safety codes applicable to the installation.

1 Except in the case of underground conversion service areas provided for in
2 sections 40-341 through 40-355 and improvement districts for underground
3 utility facilities provided for in section 48-620, if the contractor or
4 property owner conditions occupancy in a trench on a reimbursement of costs
5 associated with providing the trench, the contractor or property owner may
6 require an occupant to pay a pro rata share of the costs associated with
7 providing the trench. A public service corporation may use as a credit
8 against the payment money paid through the public service corporation's
9 conduit or other reimbursement programs.

10 J. Before initiating a complaint with a public service corporation or
11 the commission, the parties to a dispute arising under subsections F through
12 I of this section shall meet and in good faith attempt to resolve the dispute
13 through an informal dispute resolution process. Compliance with subsections
14 F through I of this section does not require inspection or enforcement by a
15 city, town or county.

16 K. After facilities have been installed initially in accordance with
17 subsection F of this section, the public service corporation, the homeowner,
18 the home builder or the contractor are IS not responsible or liable for any
19 subsequent modification to the number of initially installed facilities.

20 L. A public service corporation shall comply with every order,
21 decision, rule or regulation made by the commission in any matter relating
22 to or affecting its business as a public service corporation and shall do
23 everything necessary to secure compliance with and observance of every such
24 order, decision, rule or regulation.

25 M. The commission by rule or order may exempt or partially exempt any
26 competitive service of any public service corporation from the application
27 of section 40-203, section 40-204, subsections A and B and sections 40-248,
28 40-250, 40-251, 40-285, 40-301, 40-302, 40-303, 40-321, 40-322, 40-331,
29 40-332, 40-334, 40-365, 40-366, 40-367, 40-374 and 40-401.

30 N. The provisions of subsection B, paragraphs 3 and 5 of this section
31 are subject to legislative review by the auditor general in 2008.

32 O. The provisions of subsection B, paragraph 4 of this section are
33 subject to sunset review by the auditor general in 2003.

34 P. Failure to comply with the rules or procedures adopted pursuant to
35 subsections B and C of this section is an unlawful practice pursuant to
36 section 44-1522. The attorney general may investigate and take appropriate
37 action as prescribed by title 44, chapter 10, article 7.

38 Sec. 2. Title 42, chapter 5, article 1, Arizona Revised Statutes, is
39 amended by adding section 42-5034.01, to read:

40 42-5034.01. Mobile telecommunications services; definitions

41 A. FOR PURPOSES OF ANY TAX THAT IS LEVIED AND COLLECTED UNDER THIS
42 CHAPTER RELATING TO MOBILE TELECOMMUNICATIONS SERVICES, THE DEPARTMENT SHALL
43 LEVY AND COLLECT THE TAX PURSUANT TO THE REQUIREMENTS OF THE MOBILE
44 TELECOMMUNICATIONS SOURCING ACT (P.L. 106-252; 114 STAT. 626; 4 UNITED STATES
45 CODE SECTIONS 116 THROUGH 126).

1 B. IF A HOME SERVICE PROVIDER CHARGES A CUSTOMER AN AMOUNT OF TAX FOR
2 MOBILE TELECOMMUNICATIONS SERVICES AND THE CUSTOMER BELIEVES THAT THE CHARGE
3 IS INCORRECT, THE CUSTOMER SHALL NOTIFY THE HOME SERVICE PROVIDER IN WRITING
4 OF THE CONTESTED CHARGE. THE WRITTEN NOTIFICATION SHALL INCLUDE THE
5 CUSTOMER'S ACCOUNT NAME AND NUMBER, THE STREET ADDRESS FOR THE CUSTOMER'S
6 PRIMARY PLACE OF USE, A DESCRIPTION OF THE CONTESTED CHARGE AND OTHER
7 INFORMATION THAT THE HOME SERVICE PROVIDER REASONABLY REQUIRES TO PROCESS THE
8 NOTIFICATION.

9 C. THE HOME SERVICE PROVIDER HAS SIXTY DAYS FROM THE DATE OF THE
10 POSTMARK ON THE NOTIFICATION PRESCRIBED IN SUBSECTION A TO REVIEW THE
11 CUSTOMER'S ACCOUNT RECORDS AND ANY ELECTRONIC DATABASE OR ENHANCED ZIP CODE
12 THAT IS USED PURSUANT TO THE MOBILE TELECOMMUNICATIONS SOURCING ACT (P.L.
13 106-252; 114 STAT. 626; 4 UNITED STATES CODE SECTIONS 116 THROUGH
14 126). AFTER THE REVIEW, THE HOME SERVICE PROVIDER SHALL DETERMINE THE
15 CORRECT AMOUNT TO CHARGE THE CUSTOMER AND SHALL ISSUE A REFUND OR CREDIT TO
16 THE CUSTOMER IF ANY INCORRECT CHARGES WERE COLLECTED DURING THE PREVIOUS TWO
17 YEARS.

18 D. THE PROCEDURES IN THIS SECTION ARE THE FIRST COURSE OF REMEDY
19 AVAILABLE TO ANY CONSUMER SEEKING CORRECTION OF ASSIGNMENT OF PLACE OF
20 PRIMARY USE OR TAXING JURISDICTION OR A REFUND OF OR OTHER COMPENSATION FOR
21 TAXES ASSESSED OR OTHER CHARGES ERRONEOUSLY COLLECTED BY THE HOME SERVICE
22 PROVIDER UNDER THIS SECTION. NO CAUSE OF ACTION BASED ON A DISPUTE ARISING
23 FROM THE COLLECTION OF TAXES BY THE HOME SERVICE PROVIDER UNDER THIS SECTION
24 SHALL ACCRUE UNTIL THAT CONSUMER HAS REASONABLY EXERCISED THE RIGHTS AND
25 PROCEDURES PRESCRIBED IN THIS SECTION.

26 E. FOR PURPOSES OF THIS SECTION:

27 1. "CUSTOMER" MEANS A PERSON OR ENTITY THAT CONTRACTS WITH A HOME
28 SERVICE PROVIDER FOR MOBILE TELECOMMUNICATIONS SERVICES. CUSTOMER DOES NOT
29 INCLUDE A RESELLER OF MOBILE TELECOMMUNICATIONS SERVICES OR A SERVING CARRIER
30 THAT IS UNDER AN ARRANGEMENT TO SERVE THE CUSTOMER OUTSIDE THE HOME SERVICE
31 PROVIDER'S LICENSED SERVICE AREA.

32 2. "HOME SERVICE PROVIDER" MEANS A FACILITIES BASED CARRIER OR
33 RESELLER THAT PROVIDES MOBILE TELECOMMUNICATIONS SERVICES TO A CUSTOMER.

34 3. "MOBILE TELECOMMUNICATIONS SERVICES" MEANS COMMERCIAL MOBILE RADIO
35 SERVICE AS DEFINED IN 47 CODE OF FEDERAL REGULATIONS SECTION 20.3 IN EFFECT
36 ON JUNE 1, 1999.

37 4. "PLACE OF PRIMARY USE" MEANS AN ADDRESS THAT IS WITHIN THE LICENSED
38 SERVICE AREA OF THE HOME SERVICE PROVIDER AND THAT IS THE CUSTOMER'S
39 RESIDENTIAL OR PRIMARY BUSINESS STREET ADDRESS WHERE THE CUSTOMER'S USE OF
40 MOBILE TELECOMMUNICATIONS SERVICE PRIMARILY OCCURS.

41 Sec. 3. Title 42, chapter 6, article 1, Arizona Revised Statutes, is
42 amended by adding section 42-6007, to read:

43 42-6007. Mobile telecommunications services; definitions

44 A. ANY CITY OR TOWN THAT LEVIES AND COLLECTS A TAX WITH RESPECT TO
45 MOBILE TELECOMMUNICATIONS SERVICES SHALL LEVY AND COLLECT THE TAX PURSUANT

1 TO THE REQUIREMENTS OF THE MOBILE TELECOMMUNICATIONS SOURCING ACT
2 (P.L. 106-252; 114 STAT. 626; 4 UNITED STATES CODE SECTIONS 116 THROUGH 126).

3 B. IF A HOME SERVICE PROVIDER CHARGES A CUSTOMER AN AMOUNT OF TAX FOR
4 MOBILE TELECOMMUNICATIONS SERVICES AND THE CUSTOMER BELIEVES THAT THE CHARGE
5 IS INCORRECT, THE CUSTOMER SHALL NOTIFY THE HOME SERVICE PROVIDER IN WRITING
6 OF THE CONTESTED CHARGE. THE WRITTEN NOTIFICATION SHALL INCLUDE THE
7 CUSTOMER'S ACCOUNT NAME AND NUMBER, THE STREET ADDRESS FOR THE CUSTOMER'S
8 PRIMARY PLACE OF USE, A DESCRIPTION OF THE CONTESTED CHARGE AND OTHER
9 INFORMATION THAT THE HOME SERVICE PROVIDER REASONABLY REQUIRES TO PROCESS THE
10 NOTIFICATION.

11 C. THE HOME SERVICE PROVIDER HAS SIXTY DAYS FROM THE DATE OF THE
12 POSTMARK ON THE NOTIFICATION PRESCRIBED IN SUBSECTION A TO REVIEW THE
13 CUSTOMER'S ACCOUNT RECORDS AND ANY ELECTRONIC DATABASE OR ENHANCED ZIP CODE
14 THAT IS USED PURSUANT TO THE MOBILE TELECOMMUNICATIONS SOURCING ACT (P.L.
15 106-252; 114 STAT. 626; 4 UNITED STATES CODE SECTIONS 116 THROUGH
16 126). AFTER THE REVIEW, THE HOME SERVICE PROVIDER SHALL DETERMINE THE
17 CORRECT AMOUNT TO CHARGE THE CUSTOMER AND SHALL ISSUE A REFUND OR CREDIT TO
18 THE CUSTOMER IF ANY INCORRECT CHARGES WERE COLLECTED DURING THE PREVIOUS TWO
19 YEARS.

20 D. THE PROCEDURES IN THIS SECTION ARE THE FIRST COURSE OF REMEDY
21 AVAILABLE TO ANY CONSUMER SEEKING CORRECTION OF ASSIGNMENT OF PLACE OF
22 PRIMARY USE OR TAXING JURISDICTION OR A REFUND OF OR OTHER COMPENSATION FOR
23 TAXES ASSESSED OR OTHER CHARGES ERRONEOUSLY COLLECTED BY THE HOME SERVICE
24 PROVIDER UNDER THIS SECTION. NO CAUSE OF ACTION BASED ON A DISPUTE ARISING
25 FROM THE COLLECTION OF TAXES BY THE HOME SERVICE PROVIDER UNDER THIS SECTION
26 SHALL ACCRUE UNTIL THAT CONSUMER HAS REASONABLY EXERCISED THE RIGHTS AND
27 PROCEDURES PRESCRIBED IN THIS SECTION.

28 E. FOR PURPOSES OF THIS SECTION:

29 1. "CUSTOMER" MEANS A PERSON OR ENTITY THAT CONTRACTS WITH A HOME
30 SERVICE PROVIDER FOR MOBILE TELECOMMUNICATIONS SERVICES. CUSTOMER DOES NOT
31 INCLUDE A RESELLER OF MOBILE TELECOMMUNICATIONS SERVICES OR A SERVING CARRIER
32 THAT IS UNDER AN ARRANGEMENT TO SERVE THE CUSTOMER OUTSIDE THE HOME SERVICE
33 PROVIDER'S LICENSED SERVICE AREA.

34 2. "HOME SERVICE PROVIDER" MEANS A FACILITIES BASED CARRIER OR
35 RESELLER THAT PROVIDES MOBILE TELECOMMUNICATIONS SERVICES TO A CUSTOMER.

36 3. "MOBILE TELECOMMUNICATIONS SERVICES" MEANS COMMERCIAL MOBILE RADIO
37 SERVICE AS DEFINED IN 47 CODE OF FEDERAL REGULATIONS SECTION 20.3 IN EFFECT
38 ON JUNE 1, 1999.

39 4. "PLACE OF PRIMARY USE" MEANS AN ADDRESS THAT IS WITHIN THE LICENSED
40 SERVICE AREA OF THE HOME SERVICE PROVIDER AND THAT IS THE CUSTOMER'S
41 RESIDENTIAL OR PRIMARY BUSINESS STREET ADDRESS WHERE THE CUSTOMER'S USE OF
42 MOBILE TELECOMMUNICATIONS SERVICE PRIMARILY OCCURS.

APPROVED BY THE GOVERNOR APRIL 23, 2001

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2001.

Passed the House March 12, 2001,

Passed the Senate April 12, 2001,

by the following vote: 53 Ayes,

by the following vote: 29 Ayes,

0 Nays, 7 Not Voting

0 Nays, 1 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this day of , 20 ,

at o'clock M.

Secretary of State

H.B. 2542

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 17, 2001,

by the following vote: 52 Ayes,

2 Nays, 6 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

17 day of April, 2001,

at 11:06 o'clock A M.

[Signature]
Secretary to the Governor

Approved this 23 day of

April, 2001,

at 9:25 o'clock A M.

[Signature]
Governor of Arizona

H.B. 2542

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 23 day of April, 2001,

at 4:45 o'clock P M.

[Signature]
Secretary of State