

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)

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

2 Section 1. Heading change

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

6 Sec. 2. Section 44-1376, Arizona Revised Statutes, is amended to read:  
7 44-1376. Definitions

8 In this article, unless the context otherwise requires:

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

18 ~~1~~ 2. "Procure" means to obtain by any means, including  
19 electronically, in writing or in oral form, with or without consideration.

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

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

28 ~~2~~ 5. "Telephone" means any device that is used by a person for voice  
29 communications in connection with the services of a telephone company whether  
30 the voice communications are transmitted in analog, data or any other form.

31 ~~3~~ 6. "Telephone company" means any person that provides commercial  
32 telephone services to a customer, irrespective of the communications  
33 technology that is used to provide the service, including:

34 (a) Traditional wire line or cable telephone service.

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

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

38 (d) Voice over internet telephone service.

39 ~~4~~ 7. "Telephone record" means information that is:

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

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

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

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

9 44-1376.01. Unauthorized or fraudulent procurement, sale or  
10 receipt prohibited; procedures to protect against  
11 disclosure

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

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

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

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

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

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

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

3           44-1376.02. Application

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

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

14           1. As otherwise authorized by law.

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

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

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

24           5. To the national center for missing and exploited children in  
25 connection with a report submitted under the victims of child abuse act of  
26 1990 (42 United States Code section 13032).

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

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

41           ~~D~~ E. This article does not apply to a PUBLIC UTILITY, A telephone  
42 company OR AN ENTITY THAT MAINTAINS COMMUNICATION SERVICE RECORDS or its  
43 agents or representatives who reasonably and in good faith act pursuant to  
44 this article, notwithstanding any later determination that the action was not  
45 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.

Passed the House March 5, 20 07

Passed the Senate April 19, 20 07

by the following vote: 54 Ayes,  
1 Nays, 5 Not Voting

by the following vote: 27 Ayes,  
0 Nays, 3 Not Voting

[Signature]  
Speaker of the House  
*Pro Tempore*

[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 received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

May 9, 2007,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

  
Speaker of the House  
*Pro Tempore*  
Thomas J. Horne  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

9th day of May, 2007,

at 11:13 o'clock a. M.

Wendy L. Barra  
Secretary to the Governor

Approved this 14 day of

May, 2007,

at 9:55 o'clock A M.

J. N. [Signature]  
Governor of Arizona

H.B. 2726

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 14 day of May, 2007,

at 11:25 o'clock A. M.

Janice K. Brewer  
Secretary of State