REFERENCE TITLE: financial institution records; disclosure; notice

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2375

Introduced by
Representatives Crump: Adams, Konopnicki, Pearce

AN ACT

AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 16; RELATING TO FINANCIAL INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 6, Arizona Revised Statutes, is amended by adding chapter 16, to read:

CHAPTER 16

FINANCIAL RECORDS DISCLOSURE

ARTICLE 1. GENERAL PROVISIONS

6-1601. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CUSTOMER" MEANS ANY PERSON OR PERSON'S REPRESENTATIVE WHO USES A SERVICE OF A FINANCIAL INSTITUTION, WHO MAINTAINS AN ACCOUNT WITH A FINANCIAL INSTITUTION OR FOR WHOM A FINANCIAL INSTITUTION IS ACTING AS A FIDUCIARY RELATING TO AN ACCOUNT MAINTAINED IN THE CUSTOMER'S NAME.

2. "FINANCIAL RECORD" MEANS ANY ORIGINAL OF, OR ANY COPY OF OR THE ELECTRONIC FORMAT OF, ANY RECORD HELD BY A FINANCIAL INSTITUTION OR ANY INFORMATION DERIVED FROM THE RECORD PERTAINING TO A CUSTOMER'S ACCOUNT OR RELATIONSHIP WITH THE FINANCIAL INSTITUTION.

3. "GOVERNMENT AUTHORITY" MEANS ANY AGENCY, BOARD, COMMISSION OR DEPARTMENT OF THIS STATE OR ANY COUNTY OR MUNICIPALITY OF THIS STATE OR ANY OFFICER, EMPLOYEE, REPRESENTATIVE OR AGENT OF AN AGENCY, BOARD, COMMISSION OR DEPARTMENT OF THIS STATE OR ANY COUNTY OR MUNICIPALITY OF THIS STATE.

4. "SUPERVISORY AGENCY" MEANS ANY STATE, COUNTY OR MUNICIPAL AGENCY, BOARD, COMMISSION OR DEPARTMENT THAT HAS LEGAL AUTHORITY TO EXAMINE THE FINANCIAL CONDITION OR BUSINESS OPERATIONS OF A FINANCIAL INSTITUTION.

6-1602. Release or disclosure of financial records prohibited; exceptions

A FINANCIAL INSTITUTION SHALL NOT RELEASE OR DISCLOSE ANY FINANCIAL RECORD TO ANY GOVERNMENT AUTHORITY UNLESS ANY OF THE FOLLOWING APPLIES:

1. THE CUSTOMER GIVES WRITTEN CONSENT FOR THE DISCLOSURE OF THE SPECIFIC RECORD REQUESTED.

2. THE FINANCIAL INSTITUTION HAS BEEN SERVED A SUBPOENA ISSUED PURSUANT TO SECTION 6-1603 FOR THE SPECIFIC RECORD REQUESTED.

3. THE GOVERNMENT AUTHORITY HAS A SEARCH WARRANT FOR THE SPECIFIC RECORD PURSUANT TO SECTION 6-1605.

6-1603. Subpoena of financial records

A. A COURT OF COMPETENT JURISDICTION, STATE AGENCY OR LEGISLATIVE COMMITTEE MAY ISSUE A SUBPOENA FOR A CUSTOMER'S FINANCIAL RECORD ONLY IF AUTHORIZED BY LAW. THE SUBPOENA SHALL SPECIFY THE FINANCIAL RECORD THAT IS SOUGHT.

B. RECORDS SHALL NOT BE DISCLOSED UNTIL TWENTY-ONE DAYS AFTER THE SUBPOENA IS SERVED OR RECEIVED, AND THIS SHALL BE CLEARLY STATED IN THE SUBPOENA.

C. A COPY OF THE SUBPOENA SHALL BE SERVED ON THE CUSTOMER OR MAILED TO THE CUSTOMER'S LAST KNOWN ADDRESS ON OR BEFORE THE DATE THE SUBPOENA IS SERVED ON THE FINANCIAL INSTITUTION.

D. THE CUSTOMER HAS FOURTEEN DAYS AFTER THE SUBPOENA IS SERVED OR RECEIVED TO FILE A MOTION TO QUASH THE SUBPOENA FOR ANY OF THE FOLLOWING REASONS:

1. THE FINANCIAL RECORD SOUGHT IS IRRELEVANT OR IMMATERIAL FOR THE PURPOSE FOR WHICH IT IS SOUGHT.

2. THE RELEASE OF THE FINANCIAL RECORD WILL CAUSE AN UNREASONABLE BURDEN OR HARDSHIP UNDER THE CIRCUMSTANCES.

3. THE GOVERNMENT AUTHORITY SEEKING THE FINANCIAL RECORD IS ATTEMPTING TO HARASS THE CUSTOMER.

4. THERE IS NO MERIT IN THE PURPOSE FOR WHICH THE FINANCIAL RECORD IS SOUGHT.

E. A COPY OF THE MOTION TO QUASH FILED BY THE CUSTOMER SHALL BE SERVED BY PERSONAL SERVICE OR BY MAIL ON BOTH OF THE FOLLOWING AT LEAST TEN DAYS BEFORE ANY HEARING ON THE MOTION TO QUASH:

1. A CHAIRPERSON, A PRESIDING OFFICER OR ANY MEMBER OF THE GOVERNING BODY OF THE GOVERNMENT AUTHORITY SEEKING THE RECORDS.

2. ANY OFFICER OF THE FINANCIAL INSTITUTION THAT HAS BEEN SERVED THE SUBPOENA.

F. FAILURE OF THE CUSTOMER TO FILE A MOTION TO QUASH IN THE TIME PROVIDED FOR IN SUBSECTION D DOES NOT CONSTITUTE A WAIVER OF THE CUSTOMER'S RIGHT TO OBJECT TO THE RELEASE OR DISCLOSURE OF THE FINANCIAL RECORD SOUGHT BY THE GOVERNMENT AUTHORITY.

G. DURING THE PERIOD FOR FILING THE MOTION TO QUASH AND CONTINUING UNTIL A RULING IS MADE ON THE MOTION IF ONE IS FILED, THE FINANCIAL INSTITUTION SHALL MAKE AVAILABLE TO ITS CUSTOMER A COPY OF THE RECORDS SOUGHT AND SHALL PRESERVE THE ORIGINAL RECORDS WITHOUT ALTERATION.

H. THE NOTICE AND CHALLENGE PROCEDURES PROVIDED FOR IN THIS SECTION SHALL NOT APPLY IF THE FINANCIAL RECORDS OF THE CUSTOMER ARE SOUGHT PURSUANT TO EITHER:

1. A SUBPOENA IN CONNECTION WITH LITIGATION TO WHICH THE CUSTOMER IS A PARTY, INCLUDING LITIGATION BETWEEN A GOVERNMENT AUTHORITY AND THE CUSTOMER.

2. AN ADMINISTRATIVE SUBPOENA IN AN ADJUDICATORY PROCEEDING IN WHICH THE CUSTOMER IS A PARTY.

6-1604. Disclosures or releases authorized

A. THIS ARTICLE DOES NOT PROHIBIT THE DISCLOSURE OR RELEASE OF ANY FINANCIAL RECORD OR INFORMATION TO ANY SUPERVISORY AGENCY IN THE EXERCISE OF ITS SUPERVISORY OR REGULATORY FUNCTIONS WITH RESPECT TO A FINANCIAL INSTITUTION.

B. THIS ARTICLE DOES NOT PROHIBIT A FINANCIAL INSTITUTION FROM DISCLOSING OR RELEASING ANY FINANCIAL RECORD OR INFORMATION TO ANOTHER FINANCIAL INSTITUTION FOR THE USUAL AND REGULAR BUSINESS PURPOSES OF THE FINANCIAL INSTITUTION OR FROM PROVIDING COPIES OF ANY FINANCIAL RECORD TO ANY COURT OR GOVERNMENT AUTHORITY AS AN INCIDENT TO PERFECTING A SECURITY INTEREST, PROVING A CLAIM IN BANKRUPTCY OR OTHERWISE COLLECTING ON A DEBT

EITHER OWED THE FINANCIAL INSTITUTION ITSELF OR OWED THE FINANCIAL INSTITUTION IN ITS ROLE AS A FIDUCIARY.

C. THIS ARTICLE DOES NOT PROHIBIT A FINANCIAL INSTITUTION FROM NOTIFYING A GOVERNMENT AUTHORITY THAT THE FINANCIAL INSTITUTION OR AN OFFICER, EMPLOYEE OR AGENT OF THE FINANCIAL INSTITUTION HAS INFORMATION THAT MAY BE RELEVANT TO A POSSIBLE VIOLATION OF ANY LAW.

D. SECTIONS 6-1601, 6-1602 AND 6-1603 DO NOT APPLY TO ANY COURT ORDER OR SUBPOENA ISSUED IN CONNECTION WITH PROCEEDINGS BEFORE A COUNTY GRAND JURY, EXCEPT THAT A COURT SHALL HAVE AUTHORITY TO ORDER A FINANCIAL INSTITUTION, ON WHICH A COUNTY GRAND JURY SUBPOENA FOR CUSTOMER RECORDS HAS BEEN SERVED, NOT TO NOTIFY THE CUSTOMER OF THE EXISTENCE OF THE SUBPOENA OR INFORMATION THAT HAS BEEN FURNISHED TO THE COUNTY GRAND JURY. THE COURT MAY ORDER THAT THE CUSTOMER NOT BE NOTIFIED ONLY IF IT FINDS BOTH OF THE FOLLOWING:

1. THE REQUESTED RECORDS ARE RELEVANT TO AN ONGOING CRIMINAL INVESTIGATION BEING CONDUCTED BY THE COUNTY GRAND JURY.

2. THE DISCLOSURE OF THE EXISTENCE OR ISSUANCE OF, OR COMPLIANCE WITH, THE SUBPOENA MAY IMPEDE THE INVESTIGATION.

6-1605. Search warrants

A. A GOVERNMENT AUTHORITY MAY OBTAIN FINANCIAL RECORDS FOR USE IN A CRIMINAL INVESTIGATION OR PROCEEDING THROUGH USE OF A SEARCH WARRANT OBTAINED PURSUANT TO A HEARING IF THE COURT FINDS THAT THE RECORDS ARE RELEVANT TO A LEGITIMATE LAW ENFORCEMENT INQUIRY.

B. NO LATER THAN NINETY DAYS AFTER THE GOVERNMENT AUTHORITY SERVES THE SEARCH WARRANT ON THE FINANCIAL INSTITUTION, IT SHALL MAIL TO THE LAST KNOWN ADDRESS OF THE CUSTOMER A COPY OF THE SEARCH WARRANT TOGETHER WITH A NOTICE THAT THE RECORDS WERE OBTAINED ON A CERTAIN DATE.

C. SEARCH WARRANTS SERVED ON A FINANCIAL INSTITUTION MAY BE SERVED ONLY ON THE PERSON IN CHARGE, AS DESIGNATED BY THE INSTITUTION, AND ONLY DURING NORMAL BUSINESS HOURS.

D. THE FINANCIAL INSTITUTION SHALL BE GIVEN A REASONABLE TIME OF NOT MORE THAN TEN CALENDAR DAYS TO SEARCH THE RECORDS AND PRODUCE AND DELIVER THE REQUESTED INFORMATION.

E. IF THE FINANCIAL INSTITUTION IS UNCERTAIN WHETHER THE FINANCIAL RECORDS REQUESTED ARE THOSE OF ITS CUSTOMER, THE FINANCIAL INSTITUTION SHALL DELIVER THE RECORDS FOR IN CAMERA INSPECTION BY THE COURT.

6-1606. Certification; immunity

A. A FINANCIAL INSTITUTION SHALL NOT RELEASE THE RECORDS OF A CUSTOMER UNTIL THE GOVERNMENT AUTHORITY SEEKING THE RECORDS CERTIFIES IN WRITING THAT IT HAS COMPLIED WITH THIS ARTICLE.

B. ANY FINANCIAL INSTITUTION OR EMPLOYEE OF A FINANCIAL INSTITUTION THAT DISCLOSES THE FINANCIAL RECORDS OF A CUSTOMER PURSUANT TO THIS ARTICLE IN GOOD FAITH RELIANCE ON A CERTIFICATE OF THE GOVERNMENT AUTHORITY IS NOT LIABLE TO THE CUSTOMER FOR THE DISCLOSURE.