

REFERENCE TITLE: **personal information; breach; records; exception**

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

HB 2363

Introduced by
Representative Carter

AN ACT

AMENDING SECTIONS 44-7501 AND 44-7601, ARIZONA REVISED STATUTES; RELATING TO SECURITY OF PERSONAL INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 44-7501, Arizona Revised Statutes, is amended to
3 read:

4 44-7501. Notification of breach of security system;
5 enforcement; civil penalty; preemption; exceptions;
6 definitions

7 A. When a person that conducts business in this state and that owns or
8 licenses unencrypted computerized data that includes personal information
9 becomes aware of an incident of unauthorized acquisition and access to
10 unencrypted or unredacted computerized data that includes an individual's
11 personal information, the person shall conduct a reasonable investigation to
12 promptly determine if there has been a breach of the security system. If the
13 investigation results in a determination that there has been a breach in the
14 security system, the person shall notify the individuals affected. The
15 notice shall be made in the most expedient manner possible and without
16 unreasonable delay subject to the needs of law enforcement as provided in
17 subsection C of this section and any measures necessary to determine the
18 nature and scope of the breach, to identify the individuals affected or to
19 restore the reasonable integrity of the data system.

20 B. A person that maintains unencrypted computerized data that includes
21 personal information that the person does not own shall notify and cooperate
22 with the owner or the licensee of the information of any breach of the
23 security of the system following discovery of the breach without unreasonable
24 delay. Cooperation shall include sharing information relevant to the breach
25 of the security of the system with the owner or licensee. The person that
26 owns or licenses the computerized data shall provide notice to the individual
27 pursuant to this section. The person that maintained the data under an
28 agreement with the owner or licensee is not required to provide notice to the
29 individual pursuant to this section unless the agreement stipulates
30 otherwise.

31 C. The notification required by subsection A of this section may be
32 delayed if a law enforcement agency advises the person that the notification
33 will impede a criminal investigation. The person shall make the notification
34 after the law enforcement agency determines that it will not compromise the
35 investigation.

36 D. The disclosure required by subsection A of this section shall be
37 provided by one of the following methods:

- 38 1. Written notice.
- 39 2. Electronic notice if the person's primary method of communication
40 with the individual is by electronic means or is consistent with the
41 provisions regarding electronic records and signatures set forth in the
42 electronic signatures in global and national commerce act (P.L. 106-229; 114
43 Stat. 464; 15 United States Code section 7001).
- 44 3. Telephonic notice.

1 4. Substitute notice if the person demonstrates that the cost of
2 providing notice pursuant to paragraph 1, 2 or 3 of this subsection would
3 exceed fifty thousand dollars or that the affected class of subject
4 individuals to be notified exceeds one hundred thousand persons, or the
5 person does not have sufficient contact information. Substitute notice shall
6 consist of all of the following:

7 (a) Electronic mail notice if the person has electronic mail addresses
8 for the individuals subject to the notice.

9 (b) Conspicuous posting of the notice on the web site of the person if
10 the person maintains one.

11 (c) Notification to major statewide media.

12 E. A person who maintains the person's own notification procedures as
13 part of an information security policy for the treatment of personal
14 information and WHO is otherwise consistent with the requirements of this
15 section shall be deemed to be in compliance with the notification
16 requirements of this section if the person notifies subject individuals in
17 accordance with the person's policies if a breach of the security system
18 occurs.

19 F. A person that complies with the notification requirements or
20 security breach procedures pursuant to the rules, regulations, procedures,
21 guidance or guidelines established by the person's primary or functional
22 federal regulator is deemed to be in compliance with this section.

23 G. A person is not required to disclose a breach of the security of
24 the system if the person or a law enforcement agency, after a reasonable
25 investigation, determines that a breach of the security of the system has not
26 occurred or is not reasonably likely to occur.

27 H. This section may only be enforced by the attorney general. The
28 attorney general may bring an action to obtain actual damages for a wilful
29 and knowing violation of this section and a civil penalty not to exceed ten
30 thousand dollars per breach of the security of the system or series of
31 breaches of a similar nature that are discovered in a single investigation.

32 I. The state legislature determines that security system breach
33 notification is a matter of statewide concern. The power to regulate
34 security breach notification is preempted by this state and this section
35 shall supersede and preempt all municipal and county laws, charters,
36 ordinances and rules relating to issues regulated by this chapter.

37 J. This section does not apply to either of the following:

38 1. A person subject to title V of the Gramm-Leach-Bliley act ~~of 1999~~
39 (P.L. 106-102; 113 Stat. 1338; 15 United States Code sections 6801 through
40 6809).

41 2. Covered entities **AND BUSINESS ASSOCIATES** as defined under
42 regulations implementing the health insurance portability and accountability
43 act, 45 Code of Federal Regulations section 160.103 ~~(1996)~~ (2003).

44 K. The department of public safety, a county sheriff's department, a
45 municipal police department, a prosecution agency and a court shall create

1 and maintain an information security policy that includes notification
2 procedures for a breach of the security system of the department of public
3 safety, the county sheriff's department, the municipal police department, the
4 prosecuting agency or the court.

5 L. For the purposes of this section:

6 1. "Breach", "breach of the security of the system", "breach of the
7 security system" or "security breach" means an unauthorized acquisition of
8 and access to unencrypted or unredacted computerized data that materially
9 compromises the security or confidentiality of personal information
10 maintained by a person as part of a database of personal information
11 regarding multiple individuals and that causes or is reasonably likely to
12 cause substantial economic loss to an individual. Good faith acquisition of
13 personal information by an employee or agent of the person for the purposes
14 of the person is not a breach of the security system if the personal
15 information is not used for a purpose unrelated to the person or subject to
16 further wilful unauthorized disclosure.

17 2. "Court" means the supreme court, court of appeals, superior court,
18 courts inferior to the superior court and justice courts.

19 3. "Encrypted" means use of an algorithmic process to transform data
20 into a form in which the data is rendered unreadable or unusable without use
21 of a confidential process or key.

22 4. "Individual" means a person that is a resident of this state as
23 determined by a principal mailing address in this state as reflected in the
24 records of the person conducting business in this state at the time of the
25 breach.

26 5. "Person" means a natural person, corporation, business trust,
27 estate, trust, partnership, association, joint venture, government,
28 governmental subdivision or agency or any other legal or commercial
29 entity. Person does not include the department of public safety, a county
30 sheriff's department, a municipal police department, a prosecution agency or
31 a court.

32 6. "Personal information":

33 (a) Means an individual's first name or first initial and last name in
34 combination with any one or more of the following data elements, when the
35 data element is not encrypted, redacted or secured by any other method
36 rendering the element unreadable or unusable:

37 (i) The individual's social security number.

38 (ii) The individual's number on a driver license issued pursuant to
39 section 28-3166 or number on a nonoperating identification license issued
40 pursuant to section 28-3165.

41 (iii) The individual's financial account number or credit or debit
42 card number in combination with any required security code, access code or
43 password that would permit access to the individual's financial account.

1 (b) Does not include publicly available information that is lawfully
2 made available to the general public from federal, state or local government
3 records or widely distributed media.

4 7. "Prosecution agency" means the attorney general, any county
5 attorney or any municipal prosecutor.

6 8. "Redact" means alter or truncate data such that no more than the
7 last four digits of a social security number, driver license number,
8 nonoperating identification license number, financial account number or
9 credit or debit card number is accessible as part of the personal
10 information.

11 Sec. 2. Section 44-7601, Arizona Revised Statutes, is amended to read:

12 44-7601. Discarding and disposing of records containing
13 personal identifying information; civil penalty;
14 enforcement; definition

15 A. An entity shall not knowingly discard or dispose of records or
16 documents without redacting the information or destroying the records or
17 documents if the records or documents contain an individual's first and last
18 name or first initial and last name in combination with a corresponding
19 complete:

- 20 1. Social security number.
- 21 2. Credit card, charge card or debit card number.
- 22 3. Retirement account number.
- 23 4. Savings, checking or securities entitlement account number.
- 24 5. Driver license number or nonoperating identification license
25 number.

26 B. This section may be enforced by either of the following:

27 1. A county attorney in the county in which the records or documents
28 were wrongfully discarded or disposed. If a violation occurs by the same
29 entity in multiple counties, a county attorney in a county in which records
30 or documents were ~~not properly~~ IMPROPERLY discarded or disposed of, after
31 filing a notice of intent to enforce this section, may send a copy of the
32 notice to the county attorney in each county in which records or documents
33 were not properly discarded or disposed of and may request that the actions
34 be consolidated.

35 2. The attorney general.

36 C. A civil penalty shall be imposed for each violation of subsection A
37 OF THIS SECTION arising out of one incident. The civil penalty shall not
38 exceed:

- 39 1. Five hundred dollars for a first violation.
- 40 2. One thousand dollars for a second violation.
- 41 3. Five thousand dollars for a third or subsequent violation.

42 D. An entity that maintains and complies with the entity's own
43 procedures for the discarding or disposing of records or documents containing
44 the information listed in subsection A OF THIS SECTION that is consistent

1 with the requirements of this section shall be deemed to be in compliance
2 with this section.

3 E. This section does not apply to any of the following:

4 1. An entity subject to title V of the Gramm-Leach-Bliley act ~~of 1999~~
5 (P.L. 106-102; 113 Stat. 1338; 15 United States Code sections 6801 through
6 6809).

7 2. Covered entities **AND BUSINESS ASSOCIATES** as defined under
8 regulations implementing the health insurance portability and accountability
9 act, 45 Code of Federal Regulations section 160.103 ~~(1996)~~ (2003).

10 3. An entity subject to the federal fair credit reporting act, ~~(15~~
11 United States Code section 1681x).

12 F. This section only applies to paper records and paper documents.

13 G. For the purposes of this section, "entity" includes a corporation,
14 foreign corporation, not for profit corporation, profit and not for profit
15 unincorporated association, nonprofit corporation, sole proprietorship, close
16 corporation, corporation sole or limited liability company, a professional
17 corporation, association or limited liability company, a business trust,
18 estate, partnership, registered limited liability partnership, trust or joint
19 venture, **A** government, governmental subdivision or agency or any other legal
20 or commercial entity.