

State of Arizona  
Senate  
Fifty-second Legislature  
Second Regular Session  
2016

# SENATE BILL 1004

AN ACT

AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-269.15; AMENDING SECTION 36-136, ARIZONA REVISED STATUTES; RELATING TO THE REGULATION OF FOOD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 11, chapter 2, article 4, Arizona Revised Statutes,  
3 is amended by adding section 11-269.15, to read:

4 11-269.15. County rules; whole fruits or vegetables;  
5 exemptions; definitions

6 A. ANY RULE ADOPTED BY A DEPARTMENT RELATING TO THE PROCESSING,  
7 STORAGE, HANDLING, SERVICE OR TRANSPORTATION OF FOOD SHALL PROVIDE AN  
8 EXEMPTION RELATING TO A WHOLE FRUIT OR VEGETABLE THAT IS ANY OF THE  
9 FOLLOWING:

10 1. OFFERED AT A PUBLIC OR PRIVATE SCHOOL FACILITY OR A PUBLIC OR  
11 PRIVATE POSTSECONDARY EDUCATIONAL INSTITUTION AND THAT IS WASHED AND CUT  
12 ON-SITE FOR IMMEDIATE CONSUMPTION.

13 2. GROWN IN A HOME GARDEN, PUBLIC SCHOOL GARDEN, FOOD ESTABLISHMENT  
14 GARDEN OR COMMUNITY GARDEN IF THE RESPONSIBLE PARTY KEEPS ON THE PREMISES A  
15 SIGNED ATTESTATION THAT THE RESPONSIBLE PARTY HAS READ AND IS FOLLOWING  
16 STANDARD OPERATING PROCEDURES RECOMMENDED BY THE DEPARTMENT OF HEALTH  
17 SERVICES FOR SCHOOL AND COMMUNITY GARDENS.

18 3. OFFERED FOR COMMERCIAL OR NONCOMMERCIAL PURPOSES AT A FARMERS'  
19 MARKET.

20 B. UNTIL A DEPARTMENT ADOPTS EXEMPTIONS BY RULE AS REQUIRED BY  
21 SUBSECTION A OF THIS SECTION, WHOLE FRUIT AND VEGETABLES ARE EXEMPT FROM THE  
22 RULES RELATING TO THE PROCESSING, STORAGE, HANDLING, SERVICE OR  
23 TRANSPORTATION OF FOOD IF ANY CONDITION PRESCRIBED IN SUBSECTION A, PARAGRAPH  
24 1, 2 OR 3 IS MET.

25 C. FOR THE PURPOSES OF THIS SECTION, "DEPARTMENT" AND "RULE" HAVE THE  
26 SAME MEANINGS PRESCRIBED IN SECTION 11-251.18.

27 Sec. 2. Section 36-136, Arizona Revised Statutes, is amended to read:

28 36-136. Powers and duties of director; compensation of  
29 personnel

30 A. The director shall:

31 1. Be the executive officer of the department of health services and  
32 the state registrar of vital statistics but shall not receive compensation  
33 for services as registrar.

34 2. Perform all duties necessary to carry out the functions and  
35 responsibilities of the department.

36 3. Prescribe the organization of the department. The director shall  
37 appoint or remove personnel as necessary for the efficient work of the  
38 department and shall prescribe the duties of all personnel. The director may  
39 abolish any office or position in the department that the director believes  
40 is unnecessary.

41 4. Administer and enforce the laws relating to health and sanitation  
42 and the rules of the department.

43 5. Provide for the examination of any premises if the director has  
44 reasonable cause to believe that on the premises there exists a violation of  
45 any health law or rule of the state.

1           6. Exercise general supervision over all matters relating to  
2 sanitation and health throughout the state. When in the opinion of the  
3 director it is necessary or advisable, a sanitary survey of the whole or of  
4 any part of the state shall be made. The director may enter, examine and  
5 survey any source and means of water supply, sewage disposal plant, sewerage  
6 system, prison, public or private place of detention, asylum, hospital,  
7 school, public building, private institution, factory, workshop, tenement,  
8 public washroom, public restroom, public toilet and toilet facility, public  
9 eating room and restaurant, dairy, milk plant or food manufacturing or  
10 processing plant, and any premises in which the director has reason to  
11 believe there exists a violation of any health law or rule of the state that  
12 the director has the duty to administer.

13           7. Prepare sanitary and public health rules.

14           8. Perform other duties prescribed by law.

15           B. If the director has reasonable cause to believe that there exists a  
16 violation of any health law or rule of the state, the director may inspect  
17 any person or property in transportation through the state, and any car,  
18 boat, train, trailer, airplane or other vehicle in which that person or  
19 property is transported, and may enforce detention or disinfection as  
20 reasonably necessary for the public health if there exists a violation of any  
21 health law or rule.

22           C. The director may deputize, in writing, any qualified officer or  
23 employee in the department to do or perform on the director's behalf any act  
24 the director is by law empowered to do or charged with the responsibility of  
25 doing.

26           D. The director may delegate to a local health department, county  
27 environmental department or public health services district any functions,  
28 powers or duties that the director believes can be competently, efficiently  
29 and properly performed by the local health department, county environmental  
30 department or public health services district if:

31           1. The director or superintendent of the local health agency,  
32 environmental agency or public health services district is willing to accept  
33 the delegation and agrees to perform or exercise the functions, powers and  
34 duties conferred in accordance with the standards of performance established  
35 by the director.

36           2. Monies appropriated or otherwise made available to the department  
37 for distribution to or division among counties or public health services  
38 districts for local health work may be allocated or reallocated in a manner  
39 designed to ~~assure~~ ENSURE the accomplishment of recognized local public  
40 health activities and delegated functions, powers and duties in accordance  
41 with applicable standards of performance. Whenever in the director's opinion  
42 there is cause, the director may terminate all or a part of any delegation  
43 and may reallocate all or a part of any funds that may have been conditioned  
44 on the further performance of the functions, powers or duties conferred.

1 E. The compensation of all personnel shall be as determined pursuant  
2 to section 38-611.

3 F. The director may make and amend rules necessary for the proper  
4 administration and enforcement of the laws relating to the public health.

5 G. Notwithstanding subsection H, paragraph 1 of this section, the  
6 director may define and prescribe emergency measures for detecting,  
7 reporting, preventing and controlling communicable or infectious diseases or  
8 conditions if the director has reasonable cause to believe that a serious  
9 threat to public health and welfare exists. Emergency measures are effective  
10 for no longer than eighteen months.

11 H. The director, by rule, shall:

12 1. Define and prescribe reasonably necessary measures for detecting,  
13 reporting, preventing and controlling communicable and preventable diseases.  
14 The rules shall declare certain diseases reportable. The rules shall  
15 prescribe measures, including isolation or quarantine, **THAT ARE** reasonably  
16 required to prevent the occurrence of, or to seek early detection and  
17 alleviation of, disability, insofar as possible, from communicable or  
18 preventable diseases. The rules shall include reasonably necessary measures  
19 to control animal diseases transmittable to humans.

20 2. Define and prescribe reasonably necessary measures, in addition to  
21 those prescribed by law, regarding the preparation, embalming, cremation,  
22 interment, disinterment and transportation of dead human bodies and the  
23 conduct of funerals, relating to and restricted to communicable diseases and  
24 regarding the removal, transportation, cremation, interment or disinterment  
25 of any dead human body.

26 3. Define and prescribe reasonably necessary procedures **THAT ARE** not  
27 inconsistent with law in regard to the use and accessibility of vital  
28 records, delayed birth registration and the completion, change and amendment  
29 of vital records.

30 4. Except as relating to the beneficial use of wildlife meat by public  
31 institutions and charitable organizations pursuant to title 17, prescribe  
32 reasonably necessary measures to ~~assure~~ **ENSURE** that all food or drink,  
33 including meat and meat products and milk and milk products sold at the  
34 retail level, provided for human consumption is free from unwholesome,  
35 poisonous or other foreign substances and filth, insects or disease-causing  
36 organisms. The rules shall prescribe reasonably necessary measures governing  
37 the production, processing, labeling, storing, handling, serving and  
38 transportation of these products. The rules shall prescribe minimum  
39 standards for the sanitary facilities and conditions that shall be maintained  
40 in any warehouse, restaurant or other premises, except a meat packing plant,  
41 slaughterhouse, wholesale meat processing plant, dairy product manufacturing  
42 plant or trade product manufacturing plant. The rules shall prescribe  
43 minimum standards for any truck or other vehicle in which food or drink is  
44 produced, processed, stored, handled, served or transported. The rules shall  
45 provide for the inspection and licensing of premises and vehicles so used,

1 and for abatement as public nuisances of any premises or vehicles that do not  
2 comply with the rules and minimum standards. The rules shall provide an  
3 exemption relating to food or drink that is:

4 (a) Served at a noncommercial social event that takes place at a  
5 workplace, such as a potluck.

6 (b) Prepared at a cooking school that is conducted in an  
7 owner-occupied home.

8 (c) Not potentially hazardous and prepared in a kitchen of a private  
9 home for occasional sale or distribution for noncommercial purposes.

10 (d) Prepared or served at an employee-conducted function that lasts  
11 less than four hours and is not regularly scheduled, such as an employee  
12 recognition, an employee fund-raising or an employee social event.

13 (e) Offered at a child care facility, **A PUBLIC OR PRIVATE SCHOOL**  
14 **FACILITY OR A PUBLIC OR PRIVATE POSTSECONDARY EDUCATIONAL INSTITUTION** and  
15 limited to commercially prepackaged food that is not potentially hazardous  
16 and whole fruits and vegetables that are washed and cut on site for immediate  
17 consumption.

18 (f) Offered at locations that sell only commercially prepackaged food  
19 or drink that is not potentially hazardous.

20 (g) Baked and confectionary goods that are not potentially hazardous  
21 and that are prepared in a kitchen of a private home for commercial purposes  
22 if packaged with a label that clearly states the address of the maker,  
23 includes contact information for the maker, lists all the ingredients in the  
24 product and discloses that the product was prepared in a home. The label  
25 must be given to the final consumer of the product. If the product was made  
26 in a facility for individuals with developmental disabilities, the label must  
27 also disclose that fact. The person preparing the food or supervising the  
28 food preparation must obtain a food handler's card or certificate if one is  
29 issued by the local county and must register with an online registry  
30 established by the department pursuant to paragraph 13 of this subsection.  
31 For the purposes of this subdivision, "potentially hazardous" means baked and  
32 confectionary goods that meet the requirements of the food code published by  
33 the United States food and drug administration, as modified and incorporated  
34 by reference by the department by rule.

35 (h) **A WHOLE FRUIT OR VEGETABLE GROWN IN A HOME GARDEN, PUBLIC SCHOOL**  
36 **GARDEN, FOOD ESTABLISHMENT GARDEN OR COMMUNITY GARDEN.**

37 (i) **A WHOLE FRUIT OR VEGETABLE OFFERED FOR COMMERCIAL OR NONCOMMERCIAL**  
38 **PURPOSES AT A FARMERS' MARKET.**

39 5. Prescribe reasonably necessary measures to ~~assure~~ **ENSURE** that all  
40 meat and meat products for human consumption handled at the retail level are  
41 delivered in a manner and from sources approved by the Arizona department of  
42 agriculture and are free from unwholesome, poisonous or other foreign  
43 substances and filth, insects or disease-causing organisms. The rules shall  
44 prescribe standards for sanitary facilities to be used in identity, storage,  
45 handling and sale of all meat and meat products sold at the retail level.

1           6. Prescribe reasonably necessary measures regarding production,  
2 processing, labeling, handling, serving and transportation of bottled water  
3 to ~~assure~~ ENSURE that all bottled drinking water distributed for human  
4 consumption is free from unwholesome, poisonous, deleterious or other foreign  
5 substances and filth or disease-causing organisms. The rules shall prescribe  
6 minimum standards for the sanitary facilities and conditions that shall be  
7 maintained at any source of water, bottling plant and truck or vehicle in  
8 which bottled water is produced, processed, stored or transported and shall  
9 provide for inspection and certification of bottled drinking water sources,  
10 plants, processes and transportation and for abatement as a public nuisance  
11 of any water supply, label, premises, equipment, process or vehicle that does  
12 not comply with the minimum standards. The rules shall prescribe minimum  
13 standards for bacteriological, physical and chemical quality for bottled  
14 water and for the submission of samples at intervals prescribed in the  
15 standards.

16           7. Define and prescribe reasonably necessary measures governing ice  
17 production, handling, storing and distribution to ~~assure~~ ENSURE that all ice  
18 sold or distributed for human consumption or for the preservation or storage  
19 of food for human consumption is free from unwholesome, poisonous,  
20 deleterious or other foreign substances and filth or disease-causing  
21 organisms. The rules shall prescribe minimum standards for the sanitary  
22 facilities and conditions and the quality of ice that shall be maintained at  
23 any ice plant, storage and truck or vehicle in which ice is produced, stored,  
24 handled or transported and shall provide for inspection and licensing of the  
25 premises and vehicles, and for abatement as public nuisances of ice,  
26 premises, equipment, processes or vehicles that do not comply with the  
27 minimum standards.

28           8. Define and prescribe reasonably necessary measures concerning  
29 sewage and excreta disposal, garbage and trash collection, storage and  
30 disposal, and water supply for recreational and summer camps, campgrounds,  
31 motels, tourist courts, trailer coach parks and hotels. The rules shall  
32 prescribe minimum standards for preparation of food in community kitchens,  
33 adequacy of excreta disposal, garbage and trash collection, storage and  
34 disposal and water supply for recreational and summer camps, campgrounds,  
35 motels, tourist courts, trailer coach parks and hotels and shall provide for  
36 inspection of these premises and for abatement as public nuisances of any  
37 premises or facilities that do not comply with the rules.

38           9. Define and prescribe reasonably necessary measures concerning the  
39 sewage and excreta disposal, garbage and trash collection, storage and  
40 disposal, water supply and food preparation of all public schools. The rules  
41 shall prescribe minimum standards for sanitary conditions that shall be  
42 maintained in any public school and shall provide for inspection of these  
43 premises and facilities and for abatement as public nuisances of any premises  
44 that do not comply with the minimum standards.

1           10. Prescribe reasonably necessary measures to prevent pollution of  
2 water used in public or semipublic swimming pools and bathing places and to  
3 prevent deleterious health conditions at these places. The rules shall  
4 prescribe minimum standards for sanitary conditions that shall be maintained  
5 at any public or semipublic swimming pool or bathing place and shall provide  
6 for inspection of these premises and for abatement as public nuisances of any  
7 premises and facilities that do not comply with the minimum standards. The  
8 rules shall be developed in cooperation with the director of the department  
9 of environmental quality and shall be consistent with the rules adopted by  
10 the director of the department of environmental quality pursuant to section  
11 49-104, subsection B, paragraph 12.

12           11. Prescribe reasonably necessary measures to keep confidential  
13 information relating to diagnostic findings and treatment of patients, as  
14 well as information relating to contacts, suspects and associates of  
15 communicable disease patients. In no event shall confidential information be  
16 made available for political or commercial purposes.

17           12. Prescribe reasonably necessary measures regarding human  
18 immunodeficiency virus testing as a means to control the transmission of that  
19 virus, including the designation of anonymous test sites as dictated by  
20 current epidemiologic and scientific evidence.

21           13. Establish an online registry of food preparers that are authorized  
22 to prepare food for commercial purposes pursuant to paragraph 4 of this  
23 subsection.

24           I. The rules adopted under the authority conferred by this section  
25 shall be observed throughout the state and shall be enforced by each local  
26 board of health or public health services district, but this section does not  
27 limit the right of any local board of health or county board of supervisors  
28 to adopt ordinances and rules as authorized by law within its jurisdiction,  
29 provided that the ordinances and rules do not conflict with state law and are  
30 equal to or more restrictive than the rules of the director.

31           J. The powers and duties prescribed by this section do not apply in  
32 instances in which regulatory powers and duties relating to public health are  
33 vested by the legislature in any other state board, commission, agency or  
34 instrumentality, except that with regard to the regulation of meat and meat  
35 products, the department of health services and the Arizona department of  
36 agriculture within the area delegated to each shall adopt rules that are not  
37 in conflict.

38           K. The director, in establishing fees authorized by this section,  
39 shall comply with title 41, chapter 6. The department shall not set a fee at  
40 more than the department's cost of providing the service for which the fee is  
41 charged. State agencies are exempt from all fees imposed pursuant to this  
42 section.

43           L. After consultation with the state superintendent of public  
44 instruction, the director shall prescribe the criteria the department shall  
45 use in deciding whether or not to notify a local school district that a pupil

1 in the district has tested positive for the human immunodeficiency virus  
2 antibody. The director shall prescribe the procedure by which the department  
3 shall notify a school district if, pursuant to these criteria, the department  
4 determines that notification is warranted in a particular situation. This  
5 procedure shall include a requirement that before notification the department  
6 shall determine to its satisfaction that the district has an appropriate  
7 policy relating to nondiscrimination of the infected pupil and  
8 confidentiality of test results and that proper educational counseling has  
9 been or will be provided to staff and pupils.

10 M. Until the department adopts exemptions by rule as required by  
11 subsection H, paragraph 4, subdivision (f) of this section, food and drink ~~is~~  
12 ARE exempt from the rules prescribed in subsection H of this section if  
13 offered at locations that sell only commercially prepackaged food or drink  
14 that is not potentially hazardous, without a limitation on its display area.