

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 45
SENATE BILL 1022

AN ACT

AMENDING SECTION 36-136, ARIZONA REVISED STATUTES; RELATING TO THE
DEPARTMENT OF HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-136, Arizona Revised Statutes, is amended to
3 read:

4 36-136. Powers and duties of director; compensation of
5 personnel; rules; definitions

6 A. The director shall:

7 1. Be the executive officer of the department of health services
8 and the state registrar of vital statistics but shall not receive
9 compensation for services as registrar.

10 2. Perform all duties necessary to carry out the functions and
11 responsibilities of the department.

12 3. Prescribe the organization of the department. The director
13 shall appoint or remove personnel as necessary for the efficient work of
14 the department and shall prescribe the duties of all personnel. The
15 director may abolish any office or position in the department that the
16 director believes is unnecessary.

17 4. Administer and enforce the laws relating to health and
18 sanitation and the rules of the department.

19 5. Provide for the examination of any premises if the director has
20 reasonable cause to believe that on the premises there exists a violation
21 of any health law or rule of this state.

22 6. Exercise general supervision over all matters relating to
23 sanitation and health throughout this state. When in the opinion of the
24 director it is necessary or advisable, a sanitary survey of the whole or
25 of any part of this state shall be made. The director may enter, examine
26 and survey any source and means of water supply, sewage disposal plant,
27 sewerage system, prison, public or private place of detention, asylum,
28 hospital, school, public building, private institution, factory, workshop,
29 tenement, public washroom, public restroom, public toilet and toilet
30 facility, public eating room and restaurant, dairy, milk plant or food
31 manufacturing or processing plant, and any premises in which the director
32 has reason to believe there exists a violation of any health law or rule
33 of this state that the director has the duty to administer.

34 7. Prepare sanitary and public health rules.

35 8. Perform other duties prescribed by law.

36 B. If the director has reasonable cause to believe that there
37 exists a violation of any health law or rule of this state, the director
38 may inspect any person or property in transportation through this state,
39 and any car, boat, train, trailer, airplane or other vehicle in which that
40 person or property is transported, and may enforce detention or
41 disinfection as reasonably necessary for the public health if there exists
42 a violation of any health law or rule.

43 C. The director, after consultation with the department of
44 administration, may take all necessary steps to enhance the highest and
45 best use of the state hospital property, including contracting with third

1 parties to provide services, entering into short-term lease agreements
2 with third parties to occupy or renovate existing buildings and entering
3 into long-term lease agreements to develop the land and buildings. The
4 director shall deposit any monies collected from contracts and lease
5 agreements entered into pursuant to this subsection in the Arizona state
6 hospital charitable trust fund established by section 36-218. At least
7 thirty days before issuing a request for proposals pursuant to this
8 subsection, the department of health services shall hold a public hearing
9 to receive community and provider input regarding the highest and best use
10 of the state hospital property related to the request for proposals. The
11 department shall report to the joint committee on capital review on the
12 terms, conditions and purpose of any lease or sublease agreement entered
13 into pursuant to this subsection relating to state hospital lands or
14 buildings or the disposition of real property pursuant to this subsection,
15 including state hospital lands or buildings, and the fiscal impact on the
16 department and any revenues generated by the agreement. Any lease or
17 sublease agreement entered into pursuant to this subsection relating to
18 state hospital lands or buildings or the disposition of real property
19 pursuant to this subsection, including state hospital lands or buildings,
20 must be reviewed by the joint committee on capital review.

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

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

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

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

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

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

5 H. Notwithstanding subsection I, 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
8 or conditions if the director has reasonable cause to believe that a
9 serious threat to public health and welfare exists. Emergency measures
10 are effective for no longer than eighteen months.

11 I. The director, by rule, shall:

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

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

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

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

1 served or transported. The rules shall provide for the inspection and
2 licensing of premises and vehicles so used, and for abatement as public
3 nuisances of any premises or vehicles that do not comply with the rules
4 and minimum standards. The rules shall provide an exemption relating to
5 food or drink that is:

6 (a) Served at a noncommercial social event such as a potluck.

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

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

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

15 (e) Offered at a child care facility and limited to commercially
16 prepackaged food that is not potentially hazardous and whole fruits and
17 vegetables that are washed and cut on-site for immediate consumption.

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

20 (g) ~~Baked and confectionary goods~~ A COTTAGE FOOD PRODUCT that ~~are~~
21 IS not potentially hazardous OR A TIME OR TEMPERATURE CONTROL FOR SAFETY
22 FOOD and that ~~are~~ IS prepared in a kitchen of a private home for
23 commercial purposes, ~~if~~ INCLUDING FRUIT JAMS AND JELLIES, DRY MIXES MADE
24 WITH INGREDIENTS FROM APPROVED SOURCES, HONEY, DRY PASTA AND ROASTED
25 NUTS. COTTAGE FOOD PRODUCTS MUST BE packaged AT HOME with ~~a~~ AN ATTACHED
26 label that clearly states the ~~address~~ NAME AND REGISTRATION NUMBER of the
27 ~~maker, includes contact information for the maker~~ FOOD PREPARER, lists all
28 the ingredients in the product AND THE PRODUCT'S PRODUCTION DATE and
29 ~~discloses that the product was prepared in a home. The label must be~~
30 ~~given to the final consumer of the product~~ INCLUDES THE FOLLOWING
31 STATEMENT: "THIS PRODUCT WAS PRODUCED IN A HOME KITCHEN THAT MAY PROCESS
32 COMMON FOOD ALLERGENS AND IS NOT SUBJECT TO PUBLIC HEALTH INSPECTION." If
33 the product was made in a facility for individuals with developmental
34 disabilities, the label must also disclose that fact. The person
35 preparing the food or supervising the food preparation must ~~obtain a food~~
36 ~~handler's card or certificate if one is issued by the local county and~~
37 COMPLETE A FOOD HANDLER TRAINING COURSE FROM AN ACCREDITED PROGRAM AND
38 MAINTAIN ACTIVE CERTIFICATION. THE FOOD PREPARER must register with an
39 online registry established by the department pursuant to paragraph 13 of
40 this subsection. THE FOOD PREPARER MUST DISPLAY THE PREPARER'S
41 CERTIFICATE OF REGISTRATION WHEN OPERATING AS A TEMPORARY FOOD
42 ESTABLISHMENT. For the purposes of this subdivision, "NOT potentially
43 hazardous" means ~~baked and confectionary goods~~ COTTAGE FOOD PRODUCTS that
44 meet the requirements of the food code published by the United States food

1 and drug administration, as modified and incorporated by reference by the
2 department by rule.

3 (h) A whole fruit or vegetable grown in a public school garden that
4 is washed and cut on-site for immediate consumption.

5 5. Prescribe reasonably necessary measures to ensure that all meat
6 and meat products for human consumption handled at the retail level are
7 delivered in a manner and from sources approved by the Arizona department
8 of agriculture and are free from unwholesome, poisonous or other foreign
9 substances and filth, insects or disease-causing organisms. The rules
10 shall prescribe standards for sanitary facilities to be used in identity,
11 storage, handling and sale of all meat and meat products sold at the
12 retail level.

13 6. Prescribe reasonably necessary measures regarding production,
14 processing, labeling, handling, serving and transportation of bottled
15 water to ensure that all bottled drinking water distributed for human
16 consumption is free from unwholesome, poisonous, deleterious or other
17 foreign substances and filth or disease-causing organisms. The rules
18 shall prescribe minimum standards for the sanitary facilities and
19 conditions that shall be maintained at any source of water, bottling plant
20 and truck or vehicle in which bottled water is produced, processed, stored
21 or transported and shall provide for inspection and certification of
22 bottled drinking water sources, plants, processes and transportation and
23 for abatement as a public nuisance of any water supply, label, premises,
24 equipment, process or vehicle that does not comply with the minimum
25 standards. The rules shall prescribe minimum standards for
26 bacteriological, physical and chemical quality for bottled water and for
27 the submission of samples at intervals prescribed in the standards.

28 7. Define and prescribe reasonably necessary measures governing ice
29 production, handling, storing and distribution to ensure that all ice sold
30 or distributed for human consumption or for the preservation or storage of
31 food for human consumption is free from unwholesome, poisonous,
32 deleterious or other foreign substances and filth or disease-causing
33 organisms. The rules shall prescribe minimum standards for the sanitary
34 facilities and conditions and the quality of ice that shall be maintained
35 at any ice plant, storage and truck or vehicle in which ice is produced,
36 stored, handled or transported and shall provide for inspection and
37 licensing of the premises and vehicles, and for abatement as public
38 nuisances of ice, premises, equipment, processes or vehicles that do not
39 comply with the minimum standards.

40 8. Define and prescribe reasonably necessary measures concerning
41 sewage and excreta disposal, garbage and trash collection, storage and
42 disposal, and water supply for recreational and summer camps, campgrounds,
43 motels, tourist courts, trailer coach parks and hotels. The rules shall
44 prescribe minimum standards for preparation of food in community kitchens,
45 adequacy of excreta disposal, garbage and trash collection, storage and

1 disposal and water supply for recreational and summer camps, campgrounds,
2 motels, tourist courts, trailer coach parks and hotels and shall provide
3 for inspection of these premises and for abatement as public nuisances of
4 any premises or facilities that do not comply with the rules. Primitive
5 camp and picnic grounds offered by this state or a political subdivision
6 of this state are exempt from rules adopted pursuant to this paragraph but
7 are subject to approval by a county health department under sanitary
8 regulations adopted pursuant to section 36-183.02. Rules adopted pursuant
9 to this paragraph do not apply to two or fewer recreational vehicles as
10 defined in section 33-2102 that are not park models or park trailers, that
11 are parked on owner-occupied residential property for less than sixty days
12 and for which no rent or other compensation is paid. For the purposes of
13 this paragraph, "primitive camp and picnic grounds" means camp and picnic
14 grounds that are remote in nature and without accessibility to public
15 infrastructure such as water, electricity and sewer.

16 9. Define and prescribe reasonably necessary measures concerning
17 the sewage and excreta disposal, garbage and trash collection, storage and
18 disposal, water supply and food preparation of all public schools. The
19 rules shall prescribe minimum standards for sanitary conditions that shall
20 be maintained in any public school and shall provide for inspection of
21 these premises and facilities and for abatement as public nuisances of any
22 premises that do not comply with the minimum standards.

23 10. Prescribe reasonably necessary measures to prevent pollution of
24 water used in public or semipublic swimming pools and bathing places and
25 to prevent deleterious health conditions at these places. The rules shall
26 prescribe minimum standards for sanitary conditions that shall be
27 maintained at any public or semipublic swimming pool or bathing place and
28 shall provide for inspection of these premises and for abatement as public
29 nuisances of any premises and facilities that do not comply with the
30 minimum standards. The rules shall be developed in cooperation with the
31 director of the department of environmental quality and shall be
32 consistent with the rules adopted by the director of the department of
33 environmental quality pursuant to section 49-104, subsection B,
34 paragraph 12.

35 11. Prescribe reasonably necessary measures to keep confidential
36 information relating to diagnostic findings and treatment of patients, as
37 well as information relating to contacts, suspects and associates of
38 communicable disease patients. In no event shall confidential information
39 be made available for political or commercial purposes.

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

1 13. Establish an online registry of food preparers that are
2 authorized to prepare COTTAGE food PRODUCTS for commercial purposes
3 pursuant to paragraph 4 of this subsection. A REGISTERED FOOD PREPARER
4 SHALL RENEW THE REGISTRATION EVERY THREE YEARS AND SHALL PROVIDE TO THE
5 DEPARTMENT UPDATED REGISTRATION INFORMATION WITHIN THIRTY DAYS AFTER ANY
6 CHANGE.

7 14. Prescribe an exclusion for fetal demise cases from the
8 standardized survey known as "the hospital consumer assessment of
9 healthcare providers and systems".

10 J. The rules adopted under the authority conferred by this section
11 shall be observed throughout the state and shall be enforced by each local
12 board of health or public health services district, but this section does
13 not limit the right of any local board of health or county board of
14 supervisors to adopt ordinances and rules as authorized by law within its
15 jurisdiction, provided that the ordinances and rules do not conflict with
16 state law and are equal to or more restrictive than the rules of the
17 director.

18 K. The powers and duties prescribed by this section do not apply in
19 instances in which regulatory powers and duties relating to public health
20 are vested by the legislature in any other state board, commission, agency
21 or instrumentality, except that with regard to the regulation of meat and
22 meat products, the department of health services and the Arizona
23 department of agriculture within the area delegated to each shall adopt
24 rules that are not in conflict.

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

30 M. After consultation with the state superintendent of public
31 instruction, the director shall prescribe the criteria the department
32 shall use in deciding whether or not to notify a local school district
33 that a pupil in the district has tested positive for the human
34 immunodeficiency virus antibody. The director shall prescribe the
35 procedure by which the department shall notify a school district if,
36 pursuant to these criteria, the department determines that notification is
37 warranted in a particular situation. This procedure shall include a
38 requirement that before notification the department shall determine to its
39 satisfaction that the district has an appropriate policy relating to
40 nondiscrimination of the infected pupil and confidentiality of test
41 results and that proper educational counseling has been or will be
42 provided to staff and pupils.

43 N. Until the department adopts exemptions by rule as required by
44 subsection I, paragraph 4, subdivision (f) of this section, food and drink
45 are exempt from the rules prescribed in subsection I of this section if

1 offered at locations that sell only commercially prepackaged food or drink
2 that is not potentially hazardous, without a limitation on its display
3 area.

4 O. Until the department adopts exemptions by rule as required by
5 subsection I, paragraph 4, subdivision (h) of this section, a whole fruit
6 or vegetable grown in a public school garden that is washed and cut
7 on-site for immediate consumption is exempt from the rules prescribed in
8 subsection I of this section.

9 P. Until the department adopts an exclusion by rule as required by
10 subsection I, paragraph 14 of this section, the standardized survey known
11 as "the hospital consumer assessment of healthcare providers and systems"
12 may not include patients who experience a fetal demise.

13 Q. For the purposes of this section: ~~;~~

14 1. "COTTAGE FOOD PRODUCT":

15 (a) MEANS A FOOD THAT IS NOT POTENTIALLY HAZARDOUS OR A TIME OR
16 TEMPERATURE CONTROL FOR SAFETY FOOD AS DEFINED BY THE DEPARTMENT IN RULE
17 AND THAT IS PREPARED IN A HOME KITCHEN BY AN INDIVIDUAL WHO IS REGISTERED
18 WITH THE DEPARTMENT.

19 (b) DOES NOT INCLUDE FOODS THAT REQUIRE REFRIGERATION, PERISHABLE
20 BAKED GOODS, SALSAS, SAUCES, FERMENTED AND PICKLED FOODS, MEAT, FISH AND
21 SHELLFISH PRODUCTS, BEVERAGES, ACIDIFIED FOOD PRODUCTS, NUT BUTTERS OR
22 OTHER REDUCED-OXYGEN PACKAGED PRODUCTS.

23 2. "Fetal demise" means a fetal death that occurs or is confirmed
24 in a licensed hospital. Fetal demise does not include an abortion as
25 defined in section 36-2151.

APPROVED BY THE GOVERNOR MARCH 23, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 23, 2018.