

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

CHAPTER 48
SENATE BILL 1063

AN ACT

AMENDING SECTIONS 3-102, 3-144, 3-401 AND 3-413, ARIZONA REVISED STATUTES; REPEALING SECTION 3-415, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2011, CHAPTER 77, SECTION 10; AMENDING SECTION 3-415, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2011, CHAPTER 281, SECTION 12; AMENDING SECTIONS 3-441, 3-443, 3-444, 3-445, 3-446, 3-447, 3-448, 3-449, 3-449.02, 3-449.03, 3-449.04, 3-449.05, 3-450, 3-458, 3-466 AND 3-481, ARIZONA REVISED STATUTES; REPEALING SECTION 3-483, ARIZONA REVISED STATUTES; AMENDING TITLE 3, CHAPTER 3, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 3-483; AMENDING SECTIONS 3-484, 3-485, 3-486, 3-487, 3-488, 3-489, 3-490, 3-491, 3-492, 3-494, 3-496, 3-497, 3-498 AND 3-521, ARIZONA REVISED STATUTES; AMENDING TITLE 3, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4.1; AMENDING SECTIONS 3-527.01, 3-527.02, 36-104, 36-136, 41-1005 AND 49-221, ARIZONA REVISED STATUTES; RELATING TO PRODUCE SAFETY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 3-102, Arizona Revised Statutes, is amended to
3 read:

4 3-102. Department organization

5 A. The Arizona department of agriculture is established consisting
6 of the following divisions:

7 1. The animal services division, which is responsible for milk,
8 dairy, livestock and aquaculture regulation, the state veterinarian, meat,
9 poultry and egg inspection and performing the administrative functions
10 authorized or contracted pursuant to law for the Arizona beef council.

11 2. The plant services division, which is responsible for ~~the fruit~~
12 ~~and vegetable standardization program and~~ entomological services.

13 3. The environmental services division, which is responsible for
14 regulating seed, feed and agricultural chemicals, including pesticides and
15 fertilizers, and for native plant protection.

16 4. The weights and measures services division, which is responsible
17 for the inspection, testing and licensing of commercial weighing,
18 measuring and counting devices.

19 5. The pest management division, which is responsible for
20 regulating pest management and pest management services as defined in
21 section 3-3601.

22 6. THE CITRUS, FRUIT AND VEGETABLE DIVISION, WHICH IS RESPONSIBLE
23 FOR THE CITRUS, FRUIT AND VEGETABLE STANDARDIZATION AND PRODUCE SAFETY
24 PROGRAM UNDER CHAPTER 3, ARTICLES 2, 4, 4.1 AND 4.3 OF THIS TITLE.

25 B. The following are established in addition to and separate from
26 the divisions of the department:

27 1. ~~THE~~ THE state agricultural laboratory.

28 2. ~~THE~~ THE office of agriculture safety.

29 3. ~~THE~~ THE office of inspections.

30 4. ~~THE~~ THE office of commodity development and promotion.

31 C. The department shall have a central administrative service
32 office providing:

33 1. Data processing, accounting and budgeting, records management,
34 publications, property control and personnel services and training.

35 2. A program to cross-train appropriate personnel to enable them to
36 perform similar functions or comparable work for different administrative
37 units in the department.

38 Sec. 2. Section 3-144, Arizona Revised Statutes, is amended to
39 read:

40 3-144. State agricultural laboratory; maintenance and
41 purpose; fees

42 A. The state agricultural laboratory is established and maintained
43 to carry out this article and for laboratory examinations, diagnosis,
44 analysis, testing, quantifying and identification necessary to perform the
45 functions and duties prescribed by this article.

1 B. The state agricultural laboratory:
2 1. May accept samples from any person for regulatory, diagnostic
3 and research purposes.

4 2. SHALL REPORT TEST RESULTS ONLY TO THE PARTY THAT PROVIDED THE
5 ORIGINAL SAMPLE.

6 C. The state agricultural laboratory may collect fees for
7 laboratory services as prescribed by the director.

8 Sec. 3. Heading change

9 The chapter heading of title 3, chapter 3, Arizona Revised Statutes,
10 is changed from "MARKETING OF AGRICULTURAL PRODUCTS" to "MARKETING AND
11 PRODUCE SAFETY".

12 Sec. 4. Section 3-401, Arizona Revised Statutes, is amended to
13 read:

14 3-401. Definitions

15 In this article, unless the context otherwise requires:

16 1. "Affected commodity" means the specific citrus, fruit or
17 vegetable THAT IS regulated pursuant to article 2 or 4 of this chapter and
18 THAT IS subject to the marketing agreement or order or the proposed
19 marketing agreement or order.

20 2. "Affected person" means a producer or shipper of an affected
21 commodity.

22 3. "ASSOCIATE DIRECTOR" MEANS THE ASSOCIATE DIRECTOR OF THE CITRUS,
23 FRUIT AND VEGETABLE DIVISION OF THE DEPARTMENT.

24 ~~3-~~ 4. "Marketing agreement" or "agreement" means an agreement THAT
25 IS developed by producers or shippers of the affected commodity and THAT
26 IS entered into by the director pursuant to this article.

27 ~~4-~~ 5. "Marketing commission" or "commission" means the marketing
28 commission established under section 3-413.

29 ~~5-~~ 6. "Marketing committee" or "committee" means a marketing
30 committee established by a marketing agreement according to section 3-426.

31 ~~6-~~ 7. "Marketing order" or "order" means an order THAT IS
32 developed by producers or shippers of the affected commodity and THAT IS
33 issued by the director pursuant to this article.

34 ~~7-~~ 8. "Person" means any individual, firm, corporation, trust,
35 association or partnership.

36 ~~8-~~ 9. "Producer" means a person ~~who~~ THAT has a financial interest
37 in producing or causing citrus, fruit or vegetable commodities to be
38 produced for market in commercial quantities.

39 ~~9-~~ 10. "Shipper" means a person that engages in shipping,
40 transporting, selling or marketing citrus, fruits or vegetables under the
41 shipper's own registered trademark or label or a person ~~who~~ THAT first
42 markets the fruits or vegetables for the producer.

43 ~~10. "Supervisor" means the supervisor of standardization of the~~
44 ~~Arizona department of agriculture.~~

1 11. "Volume" means cartons or the equivalent weight of ~~Arizona grown~~
2 ARIZONA-GROWN products marketed in the preceding marketing season.

3 12. "Written assent" means a signed statement of an affected person
4 consenting to the terms of a marketing order.

5 Sec. 5. Section 3-413, Arizona Revised Statutes, is amended to
6 read:

7 3-413. Marketing commission; appointment; term

8 A. ~~THE~~ marketing commission is composed of three to nine members
9 with rotating terms of three years. Two-thirds of the members shall be
10 appointed collectively by the director and ~~supervisor~~ ASSOCIATE DIRECTOR,
11 from nominations of affected persons or representative commodity
12 associations and one-third shall be selected by the other members of the
13 marketing commission.

14 B. Members shall be selected to represent areas of this state that
15 produce the affected commodity on the basis of the volume of total
16 production in this state for the affected commodity.

17 C. ~~THE~~ marketing commission shall be composed of persons who are
18 regulated by the marketing order and shall include both producers and
19 shippers if the marketing order regulates both categories.

20 D. Commission members are not eligible to receive compensation but
21 are eligible for reimbursement of expenses pursuant to title 38, chapter
22 4, article 2.

23 Sec. 6. Repeal

24 Section 3-415, Arizona Revised Statutes, as amended by Laws 2011,
25 chapter 77, section 10, is repealed.

26 Sec. 7. Section 3-415, Arizona Revised Statutes, as amended by Laws
27 2011, chapter 281, section 12, is amended to read:

28 3-415. Administrative services; interagency agreements;
29 reimbursement

30 A. The marketing commission or marketing committee may employ staff
31 AT A RATE OF COMPENSATION DETERMINED BY THE COMMISSION OR COMMITTEE, to
32 serve at the pleasure of the commission or committee, and ~~may~~ SHALL
33 prescribe the terms and conditions of employment of employees as necessary
34 to perform the functions prescribed by this article, the marketing order
35 or THE marketing agreement. ~~The commission or committee may provide, at a~~
36 ~~rate or amount determined by the commission or committee, compensation,~~
37 ~~vehicles and vehicle expense, health care benefits, life insurance,~~
38 ~~retirement and any other cost or expense associated with employment.~~
39 ~~Reimbursement for travel and subsistence expenses for commission or~~
40 ~~committee employees shall be in the amount prescribed by title 38, chapter~~
41 ~~4, article 2.~~ All employees of the commission or committee are exempt
42 from title 38, chapter 4, ~~articles 1 and 4~~ ARTICLE 1 and title 41, chapter
43 4, articles 5 and 6 and are not under the jurisdiction of the department
44 of administration.

1 B. The commission or committee may also enter into an interagency
2 agreement ~~pursuant to title 11, chapter 7, article 3~~ with the department
3 to provide necessary administrative services to the commission or
4 committee, including:

5 1. Providing secretarial and other services necessary for the
6 commission or committee to carry out its activities.

7 2. Establishing separate operating accounts for the commission or
8 committee.

9 3. Providing necessary financial and accounting services to the
10 commission or committee, including the issuance of checks, payment of
11 bills approved by the commission or committee, annual audits, expenditure
12 and receipt reports whether monthly or annually, preparation of annual
13 budget and any other activities requested by the commission or committee.

14 4. Receiving mail and other communication for the commission or
15 committee.

16 5. Receiving monies authorized under this article for deposit in
17 the appropriate trust funds for the exclusive purpose of implementing,
18 continuing and supporting the respective marketing order or marketing
19 agreement. The commission or committee shall administer the trust fund as
20 trustee. The state treasurer shall accept, separately account for and
21 hold in trust any monies deposited in the state treasury, which are
22 considered to be trust monies as defined in section 35-310 and which shall
23 not be commingled with any other monies in the state treasury except for
24 investment purposes. On notice from the commission or committee, the
25 state treasurer shall invest and divest any trust fund monies deposited in
26 the state treasury as provided by sections 35-313 and 35-314.03, and
27 monies earned from investment shall be credited to the trust fund. The
28 beneficiary of the trust is the agricultural program established by the
29 marketing order or marketing agreement. The trust fund shall be used
30 solely for those purposes on the order of the commission or committee.
31 Surplus monies, including any unexpended and unencumbered balance at the
32 end of the fiscal year or at the termination of the marketing order or
33 agreement, do not revert to the state general fund.

34 6. Accepting donated monies on behalf of the commission or
35 committee to be credited to the account of the commission or committee.

36 7. Providing space for the meetings of the commission or committee.

37 8. Providing any other administrative services that the commission
38 or committee requests or finds necessary.

39 C. If the department performs any function under this article, it
40 acts as the agent of the marketing commission or marketing committee and
41 has no authority or control over the commission or committee or the
42 commission's or committee's employees or assets. The commission or
43 committee shall reimburse the department for any administrative services
44 the department provides from the monies received under the marketing order
45 or marketing agreement in an amount agreed on by the commission or

1 committee and the director. Any services provided by citrus, fruit and
2 vegetable standardization or the department in the normal scope of
3 services are not subject to reimbursement from a marketing commission or
4 marketing committee.

5 Sec. 8. Section 3-441, Arizona Revised Statutes, is amended to
6 read:

7 3-441. Definitions

8 In this article, unless the context otherwise requires:

9 1. "ASSOCIATE DIRECTOR" MEANS THE ASSOCIATE DIRECTOR OF THE CITRUS,
10 FRUIT AND VEGETABLE DIVISION OF THE DEPARTMENT.

11 ~~1.~~ 2. "Bulk lot" means citrus fruit that is not contained in a
12 box, carton, crate or lug but may be contained in a bin or a similar
13 container and is set apart from citrus fruit that is packaged in
14 containers authorized pursuant to this article or rules adopted pursuant
15 to this article.

16 ~~2.~~ 3. "By-products" means any product from citrus fruit **THAT IS**
17 commercially processed or manufactured for resale.

18 ~~3.~~ 4. "Citrus" or "citrus fruit" means the fruit of any orange,
19 lemon, lime, grapefruit, tangerine, ~~cumquat~~ **KUMQUAT** or other citrus tree
20 ~~which~~ **THAT** produces edible citrus fruit suitable for human consumption.

21 ~~4.~~ 5. "Commission merchant" means a person ~~who~~ **THAT** receives on
22 consignment or solicits from the producer any citrus fruit for sale on
23 commission on behalf of the producer or accepts any citrus fruit in trust
24 from the producer for the purpose of resale. Commission merchant does not
25 include a shipper.

26 ~~5.~~ 6. "Containers" or "packages" means any container used for
27 packing, shipping or selling citrus fruit.

28 ~~6.~~ 7. "Dealer" means a person that sells, markets or distributes
29 citrus fruit that the person purchased from a producer or markets as an
30 agent, broker or commission merchant, except at retail. Dealer does not
31 include a shipper.

32 ~~7.~~ 8. "Lot" means a unit of identical or similar items that are
33 grouped or consolidated in one or more containers for packaging or
34 transporting or a cluster of identical or similar items that are included
35 in the same shipping order, bill of lading or other itemized transport
36 order.

37 ~~8.~~ 9. "Packer" means a person, other than a producer, shipper or
38 dealer, **THAT IS** engaged in the business of packing any citrus fruit.

39 ~~9.~~ 10. "Person" includes an individual, firm, association,
40 partnership, trust or corporation.

41 ~~10.~~ 11. "Producer" means a person **THAT IS** engaged in this state in
42 the business of producing or causing citrus fruit to be produced for
43 market in commercial quantities.

44 ~~11.~~ 12. "Shipper" means a person ~~who~~ **THAT** ships, transports, sells
45 or markets citrus fruit under the person's registered trademark or label

1 or a person ~~who~~ THAT first markets the citrus fruit on behalf of the
2 producer. Shipper does not include a commission merchant.

3 ~~12. "Supervisor" means the supervisor of standardization employed~~
4 ~~pursuant to section 3-483.~~

5 Sec. 9. Section 3-443, Arizona Revised Statutes, is amended to
6 read:

7 3-443. Associate director; inspectors

8 A. This article and the rules adopted pursuant to this article
9 shall be enforced by the ~~supervisor of standardization~~ ASSOCIATE DIRECTOR.
10 ~~The supervisor,~~ In addition to the powers conferred ~~upon him~~ by this
11 article, THE ASSOCIATE DIRECTOR shall have the powers provided by ~~article~~
12 ARTICLES 4, 4.1 AND 4.3 of this chapter.

13 B. The ~~supervisor~~ ASSOCIATE DIRECTOR shall instruct the inspectors
14 with regard to the inspection of citrus fruit and the method of
15 determining the maturity and condition of the citrus fruit, as provided by
16 rules adopted pursuant to this article.

17 C. Citrus, fruit and vegetable standardization and the office of
18 commodities development and promotion shall cooperate in establishing and
19 administering marketing orders and marketing agreements.

20 Sec. 10. Section 3-444, Arizona Revised Statutes, is amended to
21 read:

22 3-444. Inspectors; powers and enforcement procedures; warning
23 notice; disposal notice; civil penalty

24 A. Inspectors may enter any facility, during operating hours, or a
25 commercial vehicle in this state where fresh citrus fruit is produced,
26 stored, packed or delivered for shipment, is transported or is offered for
27 sale and inspect representative samples of the fresh citrus fruit and
28 containers in order to determine compliance with this article and rules
29 adopted pursuant to this article.

30 B. If all or part of a lot, including containers, fails to comply
31 with this article or rules adopted pursuant to this article, the inspector
32 may affix a warning notice to all or part of the lot stating the reason
33 why it is held. ~~No person,~~ Other than an inspector, A PERSON may NOT
34 detach, alter or destroy the affixed warning notice except by the
35 authorization of the inspector, the ~~supervisor~~ ASSOCIATE DIRECTOR, the
36 ~~supervisor's~~ ASSOCIATE DIRECTOR'S designee, the director or a court order.

37 C. The inspector shall issue a notice of noncompliance to the
38 person in possession of the lot or part of the lot that states:

- 39 1. A description of the lot or part of the lot.
- 40 2. The specific section of law on which the noncompliance is
41 alleged.
- 42 3. The place where the lot or part of the lot is held.
- 43 4. The specific method of inspection, including the sample size.
- 44 5. The defect that caused the violation.
- 45 6. The percentage of defective product in the sample.

1 7. **THAT** the lot or part of the lot is subject to disposal if it is
2 not reconditioned and brought into compliance within the time prescribed
3 according to rules adopted pursuant to this article.

4 D. If the person who is served with the notice of noncompliance
5 does not own the lot, the person shall notify the inspector in writing of
6 the name and address of the owner. If the person knowingly conceals the
7 name or address of the owner, the person is liable for any loss to the lot
8 that the owner sustains.

9 E. If the lot is reconditioned and brought into compliance within
10 the prescribed time period and the lot otherwise complies with this
11 article and rules adopted pursuant to this article, the inspector shall
12 remove the warning notice, issue a notice of compliance to the person in
13 possession and release the lot for sale.

14 F. If the owner does not recondition and bring the lot into
15 compliance within the prescribed time period, the inspector, after
16 receiving the written consent of the owner, may divert the lot, ~~or~~ or part
17 of the lot, ~~to~~ to other lawful purposes or destroy the lot or part of the
18 lot.

19 G. If the owner refuses to give consent to the inspector to divert
20 or destroy the lot, ~~or~~ or part of the lot, ~~and~~ and the owner does not
21 recondition and bring the lot into compliance within the prescribed time
22 period, the inspector may attach a disposal notice to the lot or part of
23 the lot that violates this article or rules adopted pursuant to this
24 article and deliver a copy of the disposal notice to the owner. The
25 disposal notice requires the owner to properly dispose of the lot or part
26 of the lot by:

27 1. Diverting it to another lawful purpose, such as contributing it
28 to a nonprofit charitable organization.

29 2. Selling it, other than in regular channels of trade, such as for
30 processing.

31 3. Destroying it.

32 H. A person who violates the terms of a disposal notice is subject
33 to a civil penalty of at least twenty-five dollars for each carton but not
34 more than one thousand dollars.

35 Sec. 11. Section 3-445, Arizona Revised Statutes, is amended to
36 read:

37 3-445. Rulemaking; definition

38 A. ~~The supervisor~~ Pursuant to section 3-527.02, **THE ASSOCIATE**
39 **DIRECTOR** may recommend to the director for adoption rules **THAT ARE** not in
40 conflict with this article as the ~~supervisor~~ **ASSOCIATE DIRECTOR** deems
41 necessary to carry out ~~the provisions of~~ this article.

42 B. ~~Upon~~ **ON** recommendation of the ~~supervisor~~ **ASSOCIATE DIRECTOR**, the
43 director shall prescribe:

44 1. Standards and grades for citrus fruit produced in this state and
45 a standard for citrus fruit without specific standards pursuant to section

1 3-446. In establishing the specific standards, the ~~supervisor~~ ASSOCIATE
2 DIRECTOR shall consider factors that apply to the product, including
3 maturity, color, shape, size, firmness, freedom from decay, diseases,
4 mechanical and plant pest injury and any other factors that indicate
5 quality and condition.

6 2. The size, dimensions, labeling and markings of containers that
7 are to be used to pack citrus fruit and the packing arrangements of the
8 commodity in the container.

9 3. A permit system for experimental containers, experimental
10 products and experimental packs, including an application, permit number,
11 quantity allowed by the permit, duration of the permit and ~~record keeping~~
12 RECORDKEEPING and renewal provisions.

13 4. Sampling rules for lots and containers of citrus fruit to
14 reasonably produce a fair representation of the entire lot or container
15 sampled.

16 5. The time period allowed to recondition citrus fruit pursuant to
17 section 3-444.

18 6. Appropriate reporting and ~~record keeping~~ RECORDKEEPING
19 requirements for shippers, including:

20 (a) Reporting totals for each citrus variety shipped.

21 (b) A requirement for records to be retained for the preceding two
22 years on the amount of each citrus variety sold by the shipper for each
23 producer for purposes of reporting under article 1 of this chapter.

24 (c) A requirement for records to be retained for the preceding year
25 on the percentage ownership interest of each producer for each citrus
26 variety sold by the shipper.

27 7. Appropriate reporting and ~~record keeping~~ RECORDKEEPING
28 requirements for commission merchants.

29 C. For THE purposes of this section, "year" has the same meaning
30 prescribed in section 3-450.

31 Sec. 12. Section 3-446, Arizona Revised Statutes, is amended to
32 read:

33 3-446. Adopting new or revised standards; exception

34 A. Twenty-five ~~per cent~~ PERCENT of the producers or shippers of a
35 citrus fruit may petition the ~~supervisor~~ ASSOCIATE DIRECTOR to adopt a
36 standard.

37 B. Twenty-five ~~per cent~~ PERCENT of the producers or shippers of a
38 citrus fruit for which a standard has been established by rule may
39 petition the ~~supervisor~~ ASSOCIATE DIRECTOR to modify the standard.

40 C. Within thirty days after receiving a valid petition under
41 subsection A or B of this section, the ~~supervisor~~ ASSOCIATE DIRECTOR,
42 after notifying all other known producers and shippers of the citrus
43 fruit, shall hold a public meeting to receive comment on the proposed new
44 standard. Within fifteen days after the meeting, the ~~supervisor~~ ASSOCIATE

1 DIRECTOR shall either deny the petition in writing stating the reasons for
2 denial or initiate ~~rule making~~ RULEMAKING proceedings.

3 D. This section does not apply to any commodity that is exempt from
4 standardization under section 3-450.

5 Sec. 13. Section 3-447, Arizona Revised Statutes, is amended to
6 read:

7 3-447. Citrus, fruit and vegetable trust fund; administration

8 A. The citrus, fruit and vegetable trust fund is established for
9 the exclusive purpose of implementing, continuing and supporting the
10 agricultural ~~program~~ PROGRAMS established by this article and article 4 of
11 this chapter. The trust fund consists of revenues from assessments and
12 other monies designated for deposit in the trust fund by this article and
13 article 4 of this chapter. The trust fund shall be used solely for the
14 purpose of administering and enforcing ~~the provisions of~~ this article and
15 article 4 of this chapter.

16 B. The director shall administer the CITRUS, FRUIT AND VEGETABLE
17 trust fund as trustee. The state treasurer shall accept, separately
18 account for and hold in trust any monies deposited in the state treasury,
19 which are considered to be trust monies as defined in section 35-310 and
20 which shall not be commingled with any other monies in the state treasury
21 except for investment purposes. On notice from the director, the state
22 treasurer shall invest any trust fund monies deposited in the state
23 treasury pursuant to sections 35-313 and 35-314.03, and all interest
24 earned on these monies shall be credited to the trust fund.

25 C. The beneficiaries of the trust are the agricultural programs
26 established by this article and article 4 of this chapter.

27 D. Monies in the CITRUS, FRUIT AND VEGETABLE trust fund are exempt
28 from the provisions of section 35-190 relating to lapsing of
29 appropriations. Surplus monies, including any unexpended and unencumbered
30 balance at the end of the fiscal year, do not revert to the state general
31 fund.

32 E. The department shall make a detailed accounting on or before
33 November 1 of each year of all monies paid into and disbursed from the
34 citrus, fruit and vegetable trust fund during the preceding fiscal year
35 and transmit the report to the citrus, fruit and vegetable advisory
36 council on or before December 1.

37 F. Any monies remaining unexpended in the CITRUS, FRUIT AND
38 VEGETABLE trust fund on June 30 OF each year shall be carried forward to
39 the following year, and the ~~supervisor~~ ASSOCIATE DIRECTOR shall take that
40 amount into account in computing the assessments for that year.

1 Sec. 14. Section 3-448, Arizona Revised Statutes, is amended to
2 read:

3 3-448. Assessments; procedures; failure to pay; penalty and
4 interest; hearing; definition

5 A. In order to provide the necessary monies to enforce this article
6 and article 4 of this chapter, the ~~supervisor~~ ASSOCIATE DIRECTOR shall
7 assess a charge against each shipper in an amount of not more than one and
8 one-fourth cents per standard carton, or the equivalent weight, of each
9 kind of fruit and vegetable, including citrus, THAT IS shipped and
10 regulated under this article and article 4 of this chapter. For bulk
11 shipments of citrus used for by-products with destinations both inside and
12 outside this state, a charge is assessed of not more than two dollars for
13 each lot.

14 B. All monies collected from the assessments under this section
15 shall be ~~paid to~~ DEPOSITED IN the citrus, fruit and vegetable trust fund.

16 C. The ~~supervisor~~ ASSOCIATE DIRECTOR, pursuant to section 3-527.02,
17 shall set the amount of the charges under this section annually with the
18 approval of the director, but not in amounts greater than necessary to
19 provide revenues to defray all of the proper expenses of carrying out ~~the~~
20 ~~provisions of~~ this article and article 4 of this chapter. The ~~supervisor~~
21 ASSOCIATE DIRECTOR may establish assessments for each commodity based on
22 the time that is necessary to inspect the commodity.

23 D. Before the ~~supervisor~~ ASSOCIATE DIRECTOR may set or the director
24 may approve an increase in the assessment, the ~~supervisor~~ ASSOCIATE
25 DIRECTOR shall provide thirty days' advance notice of a public hearing and
26 the amount of the proposed assessment to all shippers ~~who~~ THAT are
27 licensed under sections 3-449 and 3-492 and to any other interested party.
28 The ~~supervisor~~ ASSOCIATE DIRECTOR shall receive testimony at the hearing
29 regarding the proposed increase in the assessment. Title 41, chapter 6
30 does not apply to setting or collecting assessments under this section.

31 E. The ~~supervisor~~ ASSOCIATE DIRECTOR shall compute the amount of
32 assessments within the limits of this section and may bill the assessments
33 twice monthly. Each shipper shall pay the charges to the ~~supervisor~~
34 ASSOCIATE DIRECTOR within sixty days after the billing date.

35 F. A shipper ~~who~~ THAT fails to pay the required assessment within
36 sixty days after the billing date is subject to a penalty of ten ~~per cent~~
37 PERCENT of the amount of the total assessment plus interest at a rate of
38 two ~~per cent~~ PERCENT per month on the unpaid balance.

39 G. A shipper may request a hearing before the ~~supervisor~~ ASSOCIATE
40 DIRECTOR to protest the amount of assessment, penalty or interest imposed.
41 If requested, the ~~supervisor~~ ASSOCIATE DIRECTOR shall hold the hearing.
42 After the hearing the ~~supervisor~~ ASSOCIATE DIRECTOR shall enter an order
43 determining the amount of the fee, penalty and interest. The shipper
44 shall pay that amount within ten days after notice of the ~~supervisor's~~
45 ASSOCIATE DIRECTOR'S determination unless the decision is appealed to the

1 director. The shipper may appeal the decision of the ~~supervisor~~ ASSOCIATE
2 DIRECTOR to the director. If the ~~supervisor's~~ ASSOCIATE DIRECTOR'S
3 decision is appealed, the director shall review the record of the hearing
4 and affirm, modify or reverse the ~~supervisor's~~ ASSOCIATE DIRECTOR'S
5 decision.

6 H. For the purposes of this section, in addition to the definition
7 of shipper ~~contained~~ in section 3-441, "shipper" ~~shall~~ also ~~include~~
8 INCLUDES shipper as defined in section 3-481.

9 Sec. 15. Section 3-449, Arizona Revised Statutes, is amended to
10 read:

11 3-449. Annual licensing; fees; application; penalty

12 A. A person may not transact business as a citrus fruit dealer or
13 shipper without first obtaining a license as provided in this article.
14 The license expires on August 1 of each year and is renewable annually.
15 The license fee shall be determined according to the annual gross sales
16 based on the dealer's or shipper's previous fiscal year as follows:

17 1. If the annual gross sales are five hundred thousand dollars or
18 more, the annual fee is four hundred fifty dollars.

19 2. If the annual gross sales are between two hundred thousand
20 dollars and five hundred thousand dollars, the annual fee is three hundred
21 dollars.

22 3. If the annual gross sales are two hundred thousand dollars or
23 less, the annual fee is one hundred fifty dollars.

24 4. If the person was not in business the previous fiscal year, the
25 annual fee is one hundred fifty dollars.

26 B. If a person engages in business in more than one category as a
27 dealer or shipper, the license designation shall be based on the category
28 in which most of the licensee's business is conducted.

29 C. The license fees collected by the ~~supervisor~~ ASSOCIATE DIRECTOR
30 shall be ~~paid into~~ DEPOSITED IN the citrus, fruit and vegetable trust
31 fund.

32 D. The application for a dealer or shipper license shall contain
33 the following information:

34 1. The full name of the person applying for the license.

35 2. Whether the applicant is an individual, partnership, firm,
36 corporation, association, trust or cooperative association and the full
37 name of each member of the partnership or firm, the full name of each
38 officer and director of the association or corporation or the full name of
39 each trustee.

40 3. The principal business address of the applicant in this state
41 and elsewhere and the address where the applicant conducts the described
42 business.

43 4. The name of the statutory agent in this state for service of
44 legal notice.

45 5. The category of license for which the applicant is applying.

1 6. A statement of the facts, signed under penalty of perjury,
2 entitling the applicant to a license under the applicable category and
3 stating whether the applicant has ever had any license to handle citrus,
4 fruit or vegetables in any state denied, suspended or revoked.

5 7. If the applicant acts as a commission merchant, a schedule of
6 commissions and charges for services, which may not be altered during the
7 term of the license except by written agreement between the parties
8 involved.

9 E. The ~~supervisor~~ ASSOCIATE DIRECTOR shall issue to the applicant a
10 license to conduct the business described for a period of one year unless
11 it is revoked for cause.

12 F. An applicant who tenders a renewal application for a license
13 that is received by the ~~supervisor~~ ASSOCIATE DIRECTOR after August 15
14 shall pay a penalty of twenty-five dollars. An applicant who tenders a
15 renewal application for a license that is received after September 1 shall
16 pay a penalty of fifty dollars. All penalties shall be deposited in the
17 citrus, fruit and vegetable trust fund.

18 Sec. 16. Section 3-449.02, Arizona Revised Statutes, is amended to
19 read:

20 3-449.02. Denial or revocation of license; hearing

21 A. In determining whether to refuse to issue a license, the
22 ~~supervisor~~ ASSOCIATE DIRECTOR shall consider:

23 1. The facts and circumstances surrounding a prior denial or
24 revocation in any state and the date of the prior denial or revocation.

25 2. The financial condition of the applicant as of the date of the
26 application.

27 3. Any outstanding judgments against the applicant.

28 4. Previous violations of this article and rules adopted pursuant
29 to this article by any person who is an officer, director, member or
30 trustee of the applicant.

31 5. Fraudulent, misleading or incomplete statements in the
32 application.

33 6. Any other facts the ~~supervisor~~ ASSOCIATE DIRECTOR considers
34 necessary to determine the qualifications of the applicant.

35 B. The ~~supervisor~~ ASSOCIATE DIRECTOR may revoke a license if the
36 licensee commits any of the following acts:

37 1. Fails or refuses within a reasonable time to render a true
38 account of sale, to make a proper settlement of the account or to pay for
39 citrus fruit, fruit or vegetables received.

40 2. Fails or refuses to pay assessment fees, penalties or interest
41 due and owing under this article and rules adopted pursuant to this
42 article for a period of four months.

43 3. Knowingly makes false or misleading statements as to the
44 condition of any citrus fruit, fruit or vegetable.

1 4. Makes fraudulent charges or returns for handling or selling any
2 citrus fruit, fruit or vegetable or for rendering any service in
3 connection with handling or selling any citrus fruit, fruit or vegetables.

4 5. Makes fraudulent or misleading statements to obtain a license.

5 6. Reconsigns a consignment to receive, collect or charge more than
6 one commission without the consent of the consignor.

7 7. Any violation of section 3-466.

8 C. A person whose license has been denied or revoked may request a
9 hearing pursuant to title 41, chapter 6, article 10.

10 Sec. 17. Section 3-449.03, Arizona Revised Statutes, is amended to
11 read:

12 3-449.03. Recordkeeping; confidentiality; inspection

13 A. A shipper shall keep records on the amount of each citrus
14 variety the shipper sells for each producer for a period of two years.
15 The shipper shall report the records for purposes of marketing orders.

16 B. Individual totals of commodities produced or shipped are not
17 subject to public disclosure and are strictly confidential. If a shipper
18 presents a signed and notarized release to the ~~supervisor~~ ASSOCIATE
19 DIRECTOR or the ~~supervisor's~~ ASSOCIATE DIRECTOR'S agent, a person may
20 receive individual totals of commodities shipped by the shipper.

21 C. Records of shippers are subject to inspection during business
22 hours by the ~~supervisor~~ ASSOCIATE DIRECTOR or the ~~supervisor's~~ ASSOCIATE
23 DIRECTOR'S designee.

24 D. The ~~supervisor~~ ASSOCIATE DIRECTOR or designee may investigate
25 any records of any transaction of a commission merchant for possible
26 violations of this article.

27 E. Every person licensed under this article shall keep an accurate
28 and complete record, which shall record the amount and character of all
29 citrus fruit received from any person for payment or sale, the date of
30 receiving the shipment, the name of the consignee, the condition of the
31 shipment if it arrives in other than good condition in the city or town in
32 which it is to be sold by the licensee and the date ~~when~~ the shipment is
33 sold, together with the price for which the shipment sold.

34 F. The records of a licensee pertaining to the receipt, packing,
35 loading, shipment and sale of citrus fruit affected by this article shall
36 at all times be open to inspection ~~upon~~ ON demand by any consignor as to
37 an entry concerning citrus fruit received by the licensee from the
38 consignor.

39 Sec. 18. Section 3-449.04, Arizona Revised Statutes, is amended to
40 read:

41 3-449.04. Appeals from inspections; fee

42 A. If the owner, or the owner's agent, of all or part of a lot
43 disagrees with the decision of an inspector as to whether the lot or part
44 of the lot conforms to the standards adopted pursuant to this article, the
45 owner or agent may request that the ~~supervisor~~ ASSOCIATE DIRECTOR or the

1 ~~supervisor's~~ ASSOCIATE DIRECTOR'S designee, other than the inspector,
2 review the testing procedures used by the inspector. When reviewing the
3 procedures, the ~~supervisor~~ ASSOCIATE DIRECTOR or designee shall consider
4 the accuracy of the test instruments, the inspection methods, including
5 the sample size, the defect determination, the percentage of the defective
6 product and any other relevant information.

7 B. The ~~supervisor~~ ASSOCIATE DIRECTOR or designee shall conduct the
8 review within eight hours ~~of~~ AFTER the request.

9 C. If the ~~supervisor~~ ASSOCIATE DIRECTOR or designee determines that
10 the inspector used improper testing procedures, a new inspection shall be
11 ordered of the lot or part of the lot within four hours after completing
12 the review in order to determine compliance. The determination after the
13 reinspection is final.

14 D. The person who requests the review shall pay a fee of
15 twenty-five dollars for the review. All monies collected under this
16 subsection shall be deposited in the citrus, fruit and vegetable trust
17 fund.

18 Sec. 19. Section 3-449.05, Arizona Revised Statutes, is amended to
19 read:

20 3-449.05. Unlawful possession; inspection; proof of
21 ownership; seizure; exceptions

22 A. If an inspector or peace officer has probable cause to believe
23 that at least fifty pounds of citrus fruit are in unlawful possession, the
24 inspector or peace officer shall request proof of ownership from the
25 person in possession.

26 B. If an inspector has probable cause to believe that at least
27 fifty pounds of citrus fruit are in unlawful possession in a vehicle, the
28 inspector may request a peace officer to stop the vehicle for inspection
29 and request proof of ownership from the person in possession.

30 C. Except as provided in subsection D OF THIS SECTION, for THE
31 purposes of this section, proof of ownership includes all of the
32 following:

- 33 1. The name, address and telephone number of the seller.
- 34 2. The name, address and telephone number of the buyer, or
35 consignee if not sold.
- 36 3. The common or generic name and quantity of the citrus fruit.
- 37 4. The date of the transaction and the date the transportation
38 began.

39 D. A bill of lading, a bill of sale, data obtainable by electronic
40 transmission or a similar type of document is considered proof of
41 ownership for THE purposes of this section.

42 E. The buyer and seller shall retain a copy of the documents
43 showing proof of ownership for sixty days after delivery.

44 F. An inspector or peace officer may seize and hold a citrus fruit
45 if, after requesting or inspecting the offered proof of ownership, the

1 inspector or peace officer reasonably believes that the person is in
2 unlawful possession of THE citrus fruit.

3 G. If an investigation reveals the lawful owner of the citrus fruit
4 that has been seized pursuant to this section, the citrus fruit shall be
5 released to the owner or the owner's agent. If a seized citrus fruit
6 remains unclaimed after a reasonable period of time, the ~~supervisor~~
7 ASSOCIATE DIRECTOR may donate the citrus fruit to a nonprofit charitable
8 organization. If the citrus fruit does not comply with the standards
9 prescribed pursuant to this article, the ~~supervisor~~ ASSOCIATE DIRECTOR may
10 destroy it.

11 H. This section does not apply to:

12 1. Citrus fruit that is transported from the farm where it is
13 produced to a commercial packing plant in this state for processing or
14 packing.

15 2. Citrus fruit that is transported and accompanied by a valid
16 disposal order issued by an inspector to comply with this article or rules
17 adopted pursuant to this article.

18 Sec. 20. Section 3-450, Arizona Revised Statutes, is amended to
19 read:

20 3-450. Exemption from citrus fruit standardization;
21 definitions

22 A. The ~~supervisor~~ ASSOCIATE DIRECTOR shall exempt any citrus fruit
23 commodity from all rules established pursuant to section 3-445, subsection
24 B, paragraphs 1 through 5 and shall exempt the collection of assessments
25 for the commodity subject to this article if the exemption is supported by
26 at least fifty-one ~~per cent~~ PERCENT of the producers ~~who~~ THAT produce at
27 least fifty-one ~~per cent~~ PERCENT of the total quantity of that particular
28 citrus fruit commodity that was marketed during the preceding year and all
29 of the other requirements of this section have been met. For the purposes
30 of this subsection, "quantity" means the percentage of ownership interest
31 a producer has in the marketed cartons.

32 B. To initiate the exemption process, a producer or shipper shall
33 present to the ~~supervisor~~ ASSOCIATE DIRECTOR a petition signed by
34 producers, under penalty of perjury, ~~who~~ THAT represent at least one-third
35 of the cartons of the commodity produced in the previous year. The
36 petition shall be submitted on a form prescribed and furnished by the
37 ~~supervisor~~ ASSOCIATE DIRECTOR. On receiving the petition, the ~~supervisor~~
38 ASSOCIATE DIRECTOR shall negotiate with the petitioner a fee for the
39 estimated costs of the notification, balloting and certification process
40 under this section. The petitioner is responsible for all costs associated
41 with this process and shall pay to the ~~supervisor~~ ASSOCIATE DIRECTOR at
42 least one-half of the fee before proceeding with the petition process.

43 C. Within ten days after receiving the fee payment under subsection
44 B of this section, the ~~supervisor~~ ASSOCIATE DIRECTOR shall send a notice
45 and a ballot to each shipper of the commodity by certified mail, return

1 receipt requested. The notice shall include a statement that the shipper
2 ~~shall~~ MUST notify each producer the shipper represents of the exemption
3 petition and of the producer's right to support or oppose the exemption.

4 D. Within sixty days after receiving the notice from the ~~supervisor~~
5 ASSOCIATE DIRECTOR, each shipper shall return the ballot to the ~~supervisor~~
6 ASSOCIATE DIRECTOR, filed under penalty of perjury, containing the
7 following information:

8 1. The name of each producer of the particular commodity that the
9 shipper deals with.

10 2. The total number of cartons produced in the preceding year by
11 each producer based on the percentage of ownership.

12 3. The vote of each producer based on the percentage of ownership
13 of cartons.

14 E. If a shipper fails to return the ballot as prescribed by
15 subsection D of this section, the ~~supervisor~~ ASSOCIATE DIRECTOR may audit
16 the shipper to ensure compliance with section 3-449.03.

17 F. Within ninety days after receiving the ballots issued under this
18 section, the ~~supervisor~~ ASSOCIATE DIRECTOR shall review the ballots and
19 determine the results. On payment of the full amount of the costs of the
20 petition process as determined under subsection B of this section, the
21 ~~supervisor~~ ASSOCIATE DIRECTOR shall certify and issue the results of the
22 ballots. If the ~~supervisor~~ ASSOCIATE DIRECTOR certifies that the ballots
23 meet the requirements of this section, the ~~supervisor~~ ASSOCIATE DIRECTOR
24 shall provide public notice of the date the exemption becomes effective,
25 which shall be within ninety days after the ~~supervisor~~ ASSOCIATE DIRECTOR
26 certifies and issues the results of the balloting.

27 G. Information provided by shippers to the ~~supervisor~~ ASSOCIATE
28 DIRECTOR for THE purposes of this section is confidential and is not a
29 public record, and the ~~supervisor~~ ASSOCIATE DIRECTOR shall not disclose
30 the information for any purpose except for the purpose of an appeal under
31 subsection H of this section.

32 H. The petitioner and any producer or shipper of the commodity for
33 which exemption is being sought has the right to appeal to the director on
34 any of the following issues:

35 1. The validity of the petition submitted under subsection B of
36 this section.

37 2. The notice requirements of this section.

38 3. The sufficiency of the submitted ballots.

39 4. The costs of the petition process.

40 I. All monies collected by the ~~supervisor~~ ASSOCIATE DIRECTOR
41 pursuant to this section shall be deposited in the citrus, fruit and
42 vegetable trust fund established by section 3-447.

43 J. The procedures prescribed by this section also apply for
44 producers and shippers to rescind an exemption that was previously granted
45 under this section. The rescission becomes effective on July 1 of a year

1 as determined by the ~~supervisor~~ ASSOCIATE DIRECTOR. ~~No~~ A rescission may
2 NOT take effect until the exemption has been in effect for at least two
3 years.

4 K. For the purposes of this section:

5 1. "Producer" means a single legal entity that has a percentage
6 ownership interest in the marketed commodity.

7 2. "Year" means July 1 through June 30.

8 Sec. 21. Section 3-458, Arizona Revised Statutes, is amended to
9 read:

10 3-458. Interstate shipments; requirements; out-of-state
11 inspection certificates; irregular containers

12 A. It is unlawful for a person, firm, company, organization or
13 corporation to import from another state for sale, to transport for
14 delivery or to deliver for sale or to sell within this state a load or lot
15 of citrus fruit unless it conforms to the grades and standards of
16 maturity, condition and pack established pursuant to this article and
17 rules adopted pursuant to this article.

18 B. The ~~supervisor~~ ASSOCIATE DIRECTOR shall examine each load or lot
19 of citrus fruit entering the state to ascertain whether the fruit conforms
20 to the established standards.

21 C. Citrus fruit grown in states ~~which~~ THAT enforce grading
22 standards equivalent to those established in this state may be permitted
23 to enter this state when accompanied by an inspection certificate issued
24 by the state or county enforcement authority in which the citrus fruit
25 ~~were~~ WAS grown disclosing that the load or lot conforms to the legally
26 established standards in that state. The certificates shall be
27 surrendered to the ~~supervisor~~ ASSOCIATE DIRECTOR.

28 D. Citrus fruit ~~which enter~~ THAT ENTERS the state in carload lots
29 shall be accompanied by an inspection certificate, which shall be
30 surrendered to the ~~supervisor~~ ASSOCIATE DIRECTOR by the receiver thereof.
31 All shipments coming into the state by truck or other conveyance shall be
32 inspected at the point of regular inspection by the ~~supervisor~~ ASSOCIATE
33 DIRECTOR, and the certificates shall there be taken up by the ~~supervisor~~
34 ASSOCIATE DIRECTOR, and when coming in by railroad shall be inspected and
35 the certificate taken up by the inspector at the point of destination.

36 E. When a motor vehicle is detained and its contents are found not
37 to conform to the standards established pursuant to this article, the
38 ~~supervisor, his~~ ASSOCIATE DIRECTOR OR THE ASSOCIATE DIRECTOR'S duly
39 authorized inspectors shall refuse entry of the citrus fruit into ~~the~~ THIS
40 state, but any load or lot of citrus fruit while in transit and consigned
41 to a destination not within ~~the~~ THIS state ~~shall be~~ IS exempt from these
42 requirements when complying with the state quarantine requirements.

43 F. Citrus fruit may be offered for sale, sold or transported in,
44 into or through this state in irregular containers, other than standard
45 packages, when the irregular containers are so marked as to clearly

1 indicate that they are not standard packages prescribed pursuant to this
2 article.

3 Sec. 22. Section 3-466, Arizona Revised Statutes, is amended to
4 read:

5 3-466. Civil penalties; hearing

6 A. A person is subject to a civil penalty of not more than five
7 hundred dollars if the person does either of the following:

- 8 1. Acts as a dealer or shipper without a valid license.
9 2. Knowingly falsifies or causes to be falsified information in a
10 record intended to show proof of ownership.

11 B. A person ~~shall be~~ IS subject to a civil penalty of not more than
12 three hundred dollars if the person does any of the following:

13 1. Makes a written or oral false, deceptive or misleading
14 representation or assertion concerning the quality, size, maturity or
15 condition of citrus fruit.

16 2. Alters, removes or destroys a warning notice from a lot or part
17 of a lot to which it was affixed except on written authorization of an
18 inspector, the ~~supervisor~~ ASSOCIATE DIRECTOR or the director or by court
19 order.

20 3. Alters a notice of noncompliance, notice of compliance or notice
21 of disposal that is issued by an inspector.

22 4. Refuses to submit any container or lot of citrus fruit governed
23 pursuant to this article to an inspection of a representative sample or to
24 refuse to stop and permit inspection of a representative sample of any
25 commercial vehicle containing citrus fruit governed pursuant to this
26 article.

27 C. A commission merchant is subject to a civil penalty of not more
28 than five hundred dollars if the commission merchant does any of the
29 following:

30 1. Knowingly makes a false or misleading statement as to the
31 condition of any citrus fruit.

32 2. Makes a fraudulent charge or return for handling or selling
33 citrus fruit or for rendering any service in connection with handling or
34 selling citrus fruit.

35 3. Reconsigns a consignment to receive, collect or charge more than
36 one commission without the consent of the consignor.

37 4. Sells citrus fruit at less than market price to a person with
38 whom the consignment merchant has a direct or indirect financial
39 connection.

40 5. Makes a sale and directly or indirectly receives a portion of
41 the purchase price other than the commission specified in the contract.

42 D. A person who is charged with violating this article or rules
43 adopted pursuant to this article may request a hearing pursuant to title
44 41, chapter 6, article 10.

1 E. Civil penalties collected pursuant to this section shall be
2 deposited in the citrus, fruit and vegetable trust fund.

3 Sec. 23. Section 3-481, Arizona Revised Statutes, is amended to
4 read:

5 3-481. Definitions

6 In this article, unless the context otherwise requires:

7 1. "Associate director" means the associate director of the
8 division.

9 2. "Bulk lot" means fresh fruit or vegetables that are not
10 contained in a box, carton, crate or lug but may be contained in a bin or
11 a similar container and are set apart from fresh fruit and vegetables that
12 are packaged in containers authorized pursuant to this article or rules
13 adopted pursuant to this article.

14 3. "By-products" means a product **THAT IS** commercially processed or
15 manufactured for resale from fruits or vegetables or their juices.

16 4. "Commission merchant" means a person ~~who~~ **THAT** receives on
17 consignment or solicits from the producer any fruit or vegetable for sale
18 on commission on behalf of the producer or ~~who~~ **THAT** accepts any fruit or
19 vegetable in trust from the producer for the purpose of resale.
20 Commission merchant does not include a shipper.

21 5. "Container" means a box, carton or lug that is used for packing,
22 shipping or selling fruit or vegetables that are authorized by this
23 article or rules adopted pursuant to this article.

24 6. "Dealer" means a person that sells, markets or distributes fruit
25 or vegetables that the person purchased from a producer or markets as an
26 agent, broker or commission merchant, except at retail. Dealer does not
27 include a shipper.

28 7. "Division" means the ~~plant services~~ **CITRUS, FRUIT AND VEGETABLE**
29 division of the ~~Arizona~~ department ~~of agriculture~~.

30 8. "Lot" means a unit of identical or similar items that are
31 produced by one person and that are grouped or consolidated in one or more
32 containers for packaging or transporting or a cluster of identical or
33 similar items that are produced by one person and that are included in the
34 same shipping order, bill of lading or other itemized transport order.

35 9. "Packer" means a person, other than a producer, shipper or
36 dealer, **THAT IS** engaged in the business of harvesting or packing fruit or
37 vegetables.

38 10. "Person" includes an individual, firm, association,
39 partnership, trust or corporation.

40 11. "Producer" means a person **THAT IS** engaged in this state in the
41 business of producing or causing fruit or vegetables to be produced for
42 market in commercial quantities.

43 12. "Shipper" means a person ~~who~~ **THAT** ships, transports, sells or
44 markets fruit or vegetables under the person's registered trademark or

1 label or a person ~~who~~ THAT first markets the fruit or vegetables on behalf
2 of the producer. Shipper does not include a commission merchant.

3 ~~13. "Supervisor" means the supervisor of standardization employed~~
4 ~~pursuant to section 3-483.~~

5 Sec. 24. Repeal

6 Section 3-483, Arizona Revised Statutes, is repealed.

7 Sec. 25. Title 3, chapter 3, article 4, Arizona Revised Statutes,
8 is amended by adding a new section 3-483, to read:

9 3-483. Associate director; qualifications

10 A. THE ASSOCIATE DIRECTOR, AS APPOINTED AND AUTHORIZED BY THE
11 DIRECTOR, SHALL ADMINISTER AND ENFORCE THIS ARTICLE AND ARTICLES 2, 4.1
12 AND 4.3 OF THIS CHAPTER AND RULES ADOPTED PURSUANT TO THOSE ARTICLES. THE
13 DIRECTOR MAY DELEGATE TO THE ASSOCIATE DIRECTOR ANY OF THE DIRECTOR'S
14 ADMINISTRATIVE RESPONSIBILITIES, POWERS OR DUTIES AS THE DIRECTOR
15 CONSIDERS TO BE NECESSARY OR DESIRABLE FOR THE PROPER ADMINISTRATION OF
16 THOSE ARTICLES.

17 B. BEFORE APPOINTING THE ASSOCIATE DIRECTOR, THE DIRECTOR SHALL
18 CONSULT WITH THE CITRUS, FRUIT AND VEGETABLE ADVISORY COUNCIL.

19 C. IF THE ASSOCIATE DIRECTOR DIES, RESIGNS OR IS DISCHARGED, THE
20 DIRECTOR SHALL APPOINT A SUCCESSOR AS SOON AS PRACTICABLE.

21 D. THE ASSOCIATE DIRECTOR MUST BE EXPERIENCED IN BOTH OF THE
22 FOLLOWING:

23 1. MANAGEMENT, BUDGETS AND PROGRAM ADMINISTRATION.

24 2. CITRUS, FRUIT OR VEGETABLE QUALITY ASSURANCE PRACTICES OR
25 PRODUCE SAFETY PROCEDURES.

26 Sec. 26. Section 3-484, Arizona Revised Statutes, is amended to
27 read:

28 3-484. Deputies and clerks; compensation; expenses

29 A. The compensation of the ~~supervisor~~ ASSOCIATE DIRECTOR shall be
30 as determined pursuant to section 38-611. The ~~supervisor~~ ASSOCIATE
31 DIRECTOR, with the approval of the director, shall fix the duties of each
32 deputy and clerk. Compensation of the deputies and clerks shall be as
33 determined pursuant to section 38-611.

34 B. The compensation of the ~~supervisor~~ ASSOCIATE DIRECTOR and all
35 expenses properly incurred in the enforcement of this article, including
36 ~~but not limited to~~ compensation, travel and subsistence expenses and
37 office expenses, shall be paid from the citrus, fruit and vegetable trust
38 fund ~~provided for in~~ ESTABLISHED BY section 3-447.

39 Sec. 27. Section 3-485, Arizona Revised Statutes, is amended to
40 read:

41 3-485. Relationship of standardization and marketing order
42 programs

43 A. Citrus, fruit and vegetable standardization and the office of
44 commodities development and promotion shall cooperate in establishing and
45 administering marketing orders and marketing agreements.

1 B. The ~~supervisor~~ ASSOCIATE DIRECTOR may perform inspections and
2 collect assessments and other monies on behalf of a marketing commission
3 or marketing committee authorized under section 3-414. Any monies
4 collected shall be disbursed through the commission or committee.

5 Sec. 28. Section 3-486, Arizona Revised Statutes, is amended to
6 read:

7 3-486. Inspectors; powers and enforcement procedures; warning
8 notice; disposal notice; civil penalty

9 A. Inspectors may enter any facility, during operating hours, or a
10 commercial vehicle in this state where fresh fruit or vegetables are
11 produced, stored, packed or delivered for shipment, are transported or are
12 offered for sale and inspect representative samples of the fresh fruit or
13 vegetables and containers in order to determine compliance with this
14 article and rules adopted pursuant to this article.

15 B. If all or part of a lot, including containers, fails to comply
16 with this article or rules adopted pursuant to this article, the inspector
17 may affix a warning notice to all or part of the lot stating the reason
18 why it is held. ~~No person,~~ Other than an inspector, A PERSON may NOT
19 detach, alter or destroy the affixed warning notice except by the
20 authorization of the inspector, the ~~supervisor~~ ASSOCIATE DIRECTOR, the
21 ~~supervisor's~~ ASSOCIATE DIRECTOR'S designee, the director or a court order.

22 C. The inspector shall issue a notice of noncompliance to the
23 person in possession of the lot or part of the lot that states:

- 24 1. A description of the lot or part of the lot.
- 25 2. The specific section of law on which the noncompliance is
26 alleged.
- 27 3. The place where the lot or part of the lot is held.
- 28 4. The specific method of inspection, including the sample size.
- 29 5. The defect that caused the violation.
- 30 6. The percentage of defective product in the sample.

31 7. THAT the lot or part of the lot is subject to disposal if it is
32 not reconditioned and brought into compliance within the time prescribed
33 according to rules adopted pursuant to this article.

34 D. If the person who is served with the notice of noncompliance
35 does not own the lot, the person shall notify the inspector in writing of
36 the name and address of the owner. If the person knowingly conceals the
37 name or address of the owner, the person is liable for any loss to the lot
38 that the owner sustains.

39 E. If the lot is reconditioned and brought into compliance within
40 the prescribed time period and the lot otherwise complies with this
41 article and rules adopted pursuant to this article, the inspector shall
42 remove the warning notice, issue a notice of compliance to the person in
43 possession and release the lot for sale.

44 F. If the owner does not recondition and bring the lot into
45 compliance within the prescribed time period, the inspector, after

1 receiving the written consent of the owner, may divert the lot, ~~or~~ or part
2 of the lot, ~~to~~ to other lawful purposes or destroy the lot or part of the
3 lot.

4 G. If the owner refuses to give consent to the inspector to divert
5 or destroy the lot, ~~or~~ or part of the lot, ~~and~~ and the owner does not
6 recondition and bring the lot into compliance within the prescribed time
7 period, the inspector may attach a disposal notice to the lot or part of
8 the lot that violates this article or rules adopted pursuant to this
9 article and deliver a copy of the disposal notice to the owner. The
10 disposal notice requires the owner to properly dispose of the lot or part
11 of the lot by:

12 1. Diverting it to another lawful purpose, such as contributing it
13 to a nonprofit charitable organization.

14 2. Selling it, other than in regular channels of trade, such as for
15 processing.

16 3. Destroying it.

17 H. A person who violates the terms of a disposal notice is subject
18 to a civil penalty of at least twenty-five dollars for each carton but not
19 more than one thousand dollars.

20 Sec. 29. Section 3-487, Arizona Revised Statutes, is amended to
21 read:

22 3-487. Rulemaking; definition

23 A. ~~The supervisor~~ Pursuant to section 3-527.02, THE ASSOCIATE
24 DIRECTOR may recommend to the director for adoption rules not in conflict
25 with this article, as the ~~supervisor~~ ASSOCIATE DIRECTOR deems necessary to
26 carry out ~~the provisions of~~ this article.

27 B. ~~Upon~~ ON recommendation of the ~~supervisor~~ ASSOCIATE DIRECTOR, the
28 director shall prescribe:

29 1. Standards and grades for fruit and vegetables produced in this
30 state and a standard for fruit and vegetables without specific standards.
31 In establishing the specific standards, the ~~supervisor~~ ASSOCIATE DIRECTOR
32 shall consider factors that apply to the product, including maturity,
33 color, shape, size, firmness, freedom from decay, diseases, mechanical and
34 plant pest injury and any other factors that indicate quality and
35 condition.

36 2. The size, dimensions, labeling and markings of containers that
37 are to be used to pack fruit or vegetables and the packing arrangements of
38 the commodity in the container.

39 3. A permit system for experimental containers, experimental
40 products and experimental packs, including an application, permit number,
41 quantity allowed by the permit, duration of the permit and ~~record keeping~~
42 RECORDKEEPING and renewal provisions.

43 4. Sampling rules for lots and containers of fruit and vegetables
44 to reasonably produce a fair representation of the entire lot or container
45 sampled.

1 5. The time period allowed to recondition fruit or vegetables
2 pursuant to section 3-486.

3 6. Appropriate reporting and ~~record-keeping~~ RECORDKEEPING
4 requirements for shippers, including:

5 (a) Reporting totals for each commodity shipped.

6 (b) A requirement for records to be retained for the preceding two
7 years on the amount of each commodity sold by the shipper for each
8 producer for purposes of reporting under article 1 of this chapter.

9 (c) A requirement for records to be retained for the preceding year
10 on the percentage ownership interest of each producer for each commodity
11 sold by the shipper.

12 7. Appropriate reporting and ~~record-keeping~~ RECORDKEEPING
13 requirements for commission merchants.

14 C. For THE purposes of this section, "year" has the same meaning
15 prescribed in section 3-491.

16 Sec. 30. Section 3-488, Arizona Revised Statutes, is amended to
17 read:

18 3-488. Confidentiality of records; inspection of records

19 A. Individual totals of commodities produced or shipped are not
20 subject to public disclosure and are strictly confidential. If a shipper
21 presents a signed and notarized release to the ~~supervisor~~ ASSOCIATE
22 DIRECTOR or the ~~supervisor's~~ ASSOCIATE DIRECTOR'S agent, a person may
23 receive individual totals of commodities shipped by the shipper.

24 B. Records of shippers are subject to inspection during business
25 hours by the ~~supervisor~~ ASSOCIATE DIRECTOR or the ~~supervisor's~~ ASSOCIATE
26 DIRECTOR'S designee. The ~~supervisor~~ ASSOCIATE DIRECTOR or designee may
27 investigate any records of any transaction of a commission merchant for
28 possible violations of this article.

29 Sec. 31. Section 3-489, Arizona Revised Statutes, is amended to
30 read:

31 3-489. Requests for inspection by unlicensed or unregistered
32 persons; fees

33 A. A person who is not licensed under article 2 of this chapter or
34 this article and who requests inspection of citrus, fruit, vegetables or
35 nuts shall pay a fee to the citrus, fruit and vegetable trust fund. The
36 ~~supervisor~~ ASSOCIATE DIRECTOR shall set the amount of the fee by rule and
37 shall assess and collect the fee for inspection service performed by the
38 ~~supervisor~~ ASSOCIATE DIRECTOR or the ~~supervisor's~~ ASSOCIATE DIRECTOR'S
39 employees. The fee shall be an amount reasonably necessary to cover the
40 costs of inspection and processing of the necessary documentation. Before
41 setting the fee, the ~~supervisor~~ ASSOCIATE DIRECTOR shall consult with the
42 citrus, fruit and vegetable advisory council.

43 B. The fee is due and payable on completing the inspection. If the
44 fee is not paid, the ~~supervisor~~ ASSOCIATE DIRECTOR may refuse to perform
45 any further inspection services.

1 C. The ~~supervisor~~ ASSOCIATE DIRECTOR may prescribe a different
2 scale of fees for different locations and different commodities based on
3 the amount of time necessary to inspect the commodities. The ~~supervisor~~
4 ASSOCIATE DIRECTOR may assess a charge for traveling expenses pursuant to
5 title 38, chapter 4, article 2.

6 D. This section does not apply to any inspection services performed
7 pursuant to article 1 of this chapter.

8 Sec. 32. Section 3-490, Arizona Revised Statutes, is amended to
9 read:

10 3-490. Unlawful possession; inspection; proof of ownership;
11 seizure; exceptions

12 A. If an inspector or peace officer has probable cause to believe
13 that at least fifty pounds of fruit or vegetables that are regulated
14 pursuant to this article are in unlawful possession, the inspector or
15 peace officer shall request proof of ownership from the person in
16 possession.

17 B. If an inspector has probable cause to believe that at least
18 fifty pounds of any fruit or vegetables that are regulated pursuant to
19 this article are in unlawful possession in a vehicle, the inspector may
20 request a peace officer to stop the vehicle for inspection and request
21 proof of ownership from the person in possession.

22 C. Except as provided in subsection D OF THIS SECTION, for THE
23 purposes of this section, proof of ownership includes all of the
24 following:

- 25 1. The name, address and telephone number of the seller.
- 26 2. The name, address and telephone number of the buyer, or
27 consignee if not sold.
- 28 3. The common or generic name and quantity of the fruit or
29 vegetable.
- 30 4. The date of the transaction and the date the transportation
31 began.

32 D. A bill of lading, a bill of sale, data obtainable by electronic
33 transmission or a similar type of document is considered proof of
34 ownership for THE purposes of this section.

35 E. The buyer and seller shall retain a copy of the documents
36 showing proof of ownership for sixty days after delivery.

37 F. An inspector or peace officer may seize and hold a fruit or
38 vegetable if, after requesting or inspecting the offered proof of
39 ownership, the inspector or peace officer reasonably believes that the
40 person is in unlawful possession of a fruit or vegetable regulated under
41 this article.

42 G. If an investigation reveals the lawful owner of the fruit or
43 vegetable that has been seized pursuant to this section, the fruit or
44 vegetable shall be released to the owner or the owner's agent. If a
45 seized fruit or vegetable remains unclaimed after a reasonable period of

1 time, the ~~supervisor~~ ASSOCIATE DIRECTOR may donate the fruit or vegetable
2 to a nonprofit charitable organization. If the fruit or vegetable does
3 not comply with the standards prescribed pursuant to this article, the
4 ~~supervisor~~ ASSOCIATE DIRECTOR may destroy it.

5 H. This section does not apply to:

6 1. Fruit or vegetables that are transported from the farm where
7 they are produced to a commercial packing plant in this state for
8 processing or packing.

9 2. Fruit or vegetables that are transported and accompanied by a
10 valid disposal order issued by an inspector to comply with this article or
11 rules adopted pursuant to this article.

12 Sec. 33. Section 3-491, Arizona Revised Statutes, is amended to
13 read:

14 3-491. Exemption from fruit or vegetable standardization;
15 definitions

16 A. The ~~supervisor~~ ASSOCIATE DIRECTOR shall exempt any fruit or
17 vegetable commodity from all rules established pursuant to section 3-487,
18 subsection B, paragraphs 1 through 5 and shall exempt the collection of
19 assessments for the commodity subject to this article if the exemption is
20 supported by at least fifty-one ~~per cent~~ PERCENT of the producers ~~who~~ THAT
21 produce at least fifty-one ~~per cent~~ PERCENT of the total quantity of that
22 particular fruit or vegetable commodity that was marketed during the
23 preceding year and all of the other requirements of this section have been
24 met. For the purposes of this subsection, "quantity" means the percentage
25 of ownership interest a producer has in the marketed cartons.

26 B. To initiate the exemption process, a producer or shipper shall
27 present to the ~~supervisor~~ ASSOCIATE DIRECTOR a petition signed by
28 producers, under penalty of perjury, ~~who~~ THAT represent at least one-third
29 of the cartons of the commodity produced in the previous year. The
30 petition shall be submitted on a form prescribed and furnished by the
31 ~~supervisor~~ ASSOCIATE DIRECTOR. On receiving the petition, the ~~supervisor~~
32 ASSOCIATE DIRECTOR shall negotiate with the petitioner a fee for the
33 estimated costs of the notification, balloting and certification process
34 under this section. The petitioner is responsible for all costs associated
35 with this process and shall pay to the ~~supervisor~~ ASSOCIATE DIRECTOR at
36 least one-half of the fee before proceeding with the petition process.

37 C. Within ten days after receiving the fee payment under subsection
38 B of this section, the ~~supervisor~~ ASSOCIATE DIRECTOR shall send a notice
39 and a ballot to each shipper of the commodity by certified mail, return
40 receipt requested. The notice shall include a statement that the shipper
41 ~~shall~~ MUST notify each producer the shipper represents of the exemption
42 petition and of the producer's right to support or oppose the exemption.

43 D. Within sixty days after receiving the notice from the ~~supervisor~~
44 ASSOCIATE DIRECTOR, each shipper shall return the ballot to the ~~supervisor~~

1 ASSOCIATE DIRECTOR, filed under penalty of perjury, containing the
2 following information:

3 1. The name of each producer of the particular commodity that the
4 shipper deals with.

5 2. The total number of cartons produced in the preceding year by
6 each producer based on the percentage of ownership.

7 3. The vote of each producer based on the percentage of ownership
8 of cartons.

9 E. If a shipper fails to return the ballot as prescribed by
10 subsection D of this section, the ~~supervisor~~ ASSOCIATE DIRECTOR may audit
11 the shipper to ensure compliance with this article.

12 F. Within ninety days after receiving the ballots issued under this
13 section, the ~~supervisor~~ ASSOCIATE DIRECTOR shall review the ballots and
14 determine the results. On payment of the full amount of the costs of the
15 petition process as determined under subsection B of this section, the
16 ~~supervisor~~ ASSOCIATE DIRECTOR shall certify and issue the results of the
17 ballots. If the ~~supervisor~~ ASSOCIATE DIRECTOR certifies that the ballots
18 meet the requirements of this section, the ~~supervisor~~ ASSOCIATE DIRECTOR
19 shall provide public notice of the date the exemption becomes effective,
20 which shall be within ninety days after the ~~supervisor~~ ASSOCIATE DIRECTOR
21 certifies and issues the results of the balloting.

22 G. Information provided by shippers to the ~~supervisor~~ ASSOCIATE
23 DIRECTOR for THE purposes of this section is confidential and is not a
24 public record, and the ~~supervisor~~ ASSOCIATE DIRECTOR shall not disclose
25 the information for any purpose except for the purpose of an appeal under
26 subsection H of this section.

27 H. The petitioner and any producer or shipper of the commodity for
28 which exemption is being sought has the right to appeal to the director on
29 any of the following issues:

30 1. The validity of the petition submitted under subsection B of
31 this section.

32 2. The notice requirements of this section.

33 3. The sufficiency of the submitted ballots.

34 4. The costs of the petition process.

35 I. All monies collected by the ~~supervisor~~ ASSOCIATE DIRECTOR
36 pursuant to this section shall be deposited in the citrus, fruit and
37 vegetable trust fund established by section 3-447.

38 J. The procedures prescribed by this section also apply for
39 producers and shippers to rescind an exemption that was previously granted
40 under this section. The rescission becomes effective on July 1 of a year
41 as determined by the ~~supervisor~~ ASSOCIATE DIRECTOR. ~~No~~ A rescission may
42 NOT take effect until the exemption has been in effect for at least two
43 years.

1 K. For the purposes of this section:

2 1. "Producer" means a single legal entity that has a percentage
3 ownership interest in the marketed commodity.

4 2. "Year" means July 1 through June 30.

5 Sec. 34. Section 3-492, Arizona Revised Statutes, is amended to
6 read:

7 3-492. Licensing dealers and shippers; application; fees;
8 penalty

9 A. A person may not act as a dealer or shipper without first
10 obtaining a license as provided in this article. Application for the
11 license shall be filed with the ~~supervisor~~ ASSOCIATE DIRECTOR and
12 accompanied by a license fee determined according to the annual gross
13 sales based on the dealer's or shipper's previous fiscal year as follows:

14 1. If the annual gross sales are five hundred thousand dollars or
15 more, the annual fee is five hundred dollars.

16 2. If the annual gross sales are between two hundred thousand
17 dollars and five hundred thousand dollars, the annual fee is three hundred
18 fifty dollars.

19 3. If the annual gross sales are two hundred thousand dollars or
20 less, the annual fee is two hundred dollars.

21 4. If the person was not in business the previous fiscal year, the
22 annual fee is two hundred dollars.

23 B. If a person engages in business in more than one category as a
24 dealer or shipper, the license designation shall be based on the category
25 in which most of the licensee's business is conducted.

26 C. The monies received as license fees under this section shall be
27 paid into the citrus, fruit and vegetable trust fund. The license shall
28 expire on September 1 of each year and is renewable annually.

29 D. The application for a dealer or shipper license shall contain
30 the following information:

31 1. The full name of the person applying for the license.

32 2. Whether the applicant is an individual, partnership, firm,
33 corporation, association, trust or cooperative association and the full
34 name of each member of the partnership or firm, the full name of each
35 officer and director of the association or corporation or the full name of
36 each trustee.

37 3. The principal business address of the applicant in this state
38 and elsewhere and the address where the applicant conducts the described
39 business.

40 4. The name of the statutory agent in this state for service of
41 legal notice.

42 5. The category of license for which the applicant is applying.

43 6. A statement of the facts, signed under penalty of perjury,
44 entitling the applicant to a license under the applicable category and

1 stating whether the applicant has ever had any license to handle citrus,
2 fruit or vegetables in any state denied, suspended or revoked.

3 7. If the applicant acts as a commission merchant, a schedule of
4 commissions and charges for services, which may not be altered during the
5 term of the license except by written agreement between the parties
6 involved.

7 E. The ~~supervisor~~ ASSOCIATE DIRECTOR shall issue to the applicant a
8 license to conduct the business described for a period of one year unless
9 it is revoked for cause.

10 F. An applicant who tenders a renewal application for a license
11 that is received by the ~~supervisor~~ ASSOCIATE DIRECTOR after September 15
12 shall pay a penalty of twenty-five dollars. An applicant who tenders a
13 renewal application for a license that is received after October 1 shall
14 pay a penalty of fifty dollars. All penalties shall be deposited in the
15 citrus, fruit and vegetable trust fund.

16 Sec. 35. Section 3-494, Arizona Revised Statutes, is amended to
17 read:

18 3-494. Denial or revocation of license; hearing

19 A. In determining whether to refuse to issue a license, the
20 ~~supervisor~~ ASSOCIATE DIRECTOR shall consider:

21 1. The facts and circumstances surrounding a prior denial or
22 revocation in any state and the date of the prior denial or revocation.

23 2. The financial condition of the applicant as of the date of the
24 application.

25 3. Any outstanding judgments against the applicant.

26 4. Previous violations of this article and rules adopted pursuant
27 to this article by any person who is an officer, director, member or
28 trustee of the applicant.

29 5. Fraudulent, misleading or incomplete statements in the
30 application.

31 6. Any other facts the ~~supervisor~~ ASSOCIATE DIRECTOR considers
32 necessary to determine the qualifications of the applicant.

33 B. The ~~supervisor~~ ASSOCIATE DIRECTOR may revoke a license if the
34 licensee commits any of the following acts:

35 1. ~~Failing~~ FAILS or ~~refusing~~ REFUSES within a reasonable time to
36 render a true account of sale, to make a proper settlement of the account
37 or to pay for citrus fruit, fruit or vegetables received.

38 2. ~~Failing~~ FAILS or ~~refusing~~ REFUSES to pay assessment fees,
39 penalties or interest due and owing under this article and rules adopted
40 pursuant to this article for a period of four months.

41 3. Knowingly ~~making~~ MAKES false or misleading statements as to the
42 condition of any citrus fruit, fruit or vegetable.

43 4. ~~Making~~ MAKES fraudulent charges or returns for handling or
44 selling any citrus fruit, fruit or vegetable or for rendering any service

1 in connection with handling or selling any citrus fruit, fruit or
2 vegetables.

3 5. ~~Making~~ MAKES fraudulent or misleading statements to obtain a
4 license.

5 6. ~~Reconsigning~~ RECONSIGNS a consignment to receive, collect or
6 charge more than one commission without the consent of the consignor.

7 7. Any violation of section 3-521.

8 C. A person whose license has been denied or revoked may request a
9 hearing pursuant to title 41, chapter 6, article 10.

10 Sec. 36. Section 3-496, Arizona Revised Statutes, is amended to
11 read:

12 3-496. List of licensees; display of license

13 A. The ~~supervisor~~ ASSOCIATE DIRECTOR may publish a pamphlet
14 containing a list of all licensed dealers and shippers and the rules
15 pertaining to the enforcement of this article.

16 B. Each licensed dealer and shipper shall keep the license in the
17 dealer's or shipper's office or at the dealer's or shipper's principal
18 place of business.

19 Sec. 37. Section 3-497, Arizona Revised Statutes, is amended to
20 read:

21 3-497. Adopting new or revised standards; exception

22 A. Ten or ten ~~per cent~~ PERCENT of the producers or shippers of a
23 fruit or vegetable, whichever is less, may petition the ~~supervisor~~
24 ASSOCIATE DIRECTOR to adopt a standard.

25 B. Ten or ten ~~per cent~~ PERCENT, whichever is less, of the producers
26 or shippers of a fruit or vegetable for which a standard has been
27 established by rule may petition the ~~supervisor~~ ASSOCIATE DIRECTOR to
28 modify the standard.

29 C. Within thirty days after receiving a valid petition, the
30 ~~supervisor~~ ASSOCIATE DIRECTOR, after notifying all other known producers
31 and shippers of the fruit or vegetable, shall hold a public meeting to
32 receive comment on the proposed new standard. Within fifteen days after
33 the meeting, the ~~supervisor~~ ASSOCIATE DIRECTOR shall either deny the
34 petition in writing stating the reasons for denial or initiate ~~rule making~~
35 RULEMAKING proceedings.

36 D. This section does not apply to any commodity that is exempt from
37 standardization under section 3-491.

38 Sec. 38. Section 3-498, Arizona Revised Statutes, is amended to
39 read:

40 3-498. Appeals from inspection; fee

41 A. If the owner, or the owner's agent, of all or part of a lot
42 disagrees with the decision of an inspector as to whether the lot or part
43 of the lot conforms to the standards and other rules adopted pursuant to
44 this article, the owner or agent may request that the ~~supervisor~~ ASSOCIATE
45 DIRECTOR or the ~~supervisor's~~ ASSOCIATE DIRECTOR'S designee, other than the

1 inspector, review the testing procedures used by the inspector. When
2 reviewing the procedures, the ~~supervisor~~ ASSOCIATE DIRECTOR or designee
3 shall consider the accuracy of the test instruments, the inspection
4 methods, including the sample size, the defect determination, the
5 percentage of the defective product and any other relevant information.

6 B. The ~~supervisor~~ ASSOCIATE DIRECTOR or designee shall conduct the
7 review within eight hours ~~of~~ AFTER the request. If the ~~supervisor~~
8 ASSOCIATE DIRECTOR or designee determines that the inspector used improper
9 testing procedures, a new inspection shall be ordered of the lot or part
10 of the lot within four hours after completing the review in order to
11 determine compliance. The determination after the reinspection is final.

12 C. The person who requests the review shall pay a fee of
13 twenty-five dollars for the review. All monies collected under this
14 subsection shall be deposited in the citrus, fruit and vegetable trust
15 fund.

16 Sec. 39. Section 3-521, Arizona Revised Statutes, is amended to
17 read:

18 3-521. Civil penalties; hearing

19 A. A person is subject to a civil penalty of not more than five
20 hundred dollars if the person does either of the following:

- 21 1. Acts as a dealer or shipper without a valid license.
- 22 2. Knowingly falsifies or causes to be falsified information in a
23 record intended to show proof of ownership.

24 B. A person ~~shall be~~ IS subject to a civil penalty of not more than
25 three hundred dollars if the person does any of the following:

- 26 1. Makes a written or oral false, deceptive or misleading
27 representation or assertion concerning the quality, size, maturity or
28 condition of fruit or vegetables.
- 29 2. Alters, removes or destroys a warning notice from a lot or part
30 of a lot to which it was affixed except on written authorization of an
31 inspector, the ~~supervisor~~ ASSOCIATE DIRECTOR or the director or by court
32 order.

33 3. Alters a notice of noncompliance, notice of compliance or notice
34 of disposal that is issued by an inspector.

35 4. Refuses to submit any container or lot of fruit or vegetables
36 governed by this article to an inspection of a representative sample or
37 refuses to stop and permit inspection of a representative sample of any
38 commercial vehicle containing fruit and vegetables governed by this
39 article.

40 C. A commission merchant is subject to a civil penalty of not more
41 than five hundred dollars if the commission merchant does any of the
42 following:

- 43 1. Knowingly makes a false or misleading statement as to the
44 condition of any fruit or vegetable.

1 2. Makes a fraudulent charge or return for handling or selling a
2 fruit or vegetable or for rendering any service in connection with
3 handling or selling a fruit or vegetable.

4 3. Reconsigns a consignment to receive, collect or charge more than
5 one commission without the consent of the consignor.

6 4. Sells a fruit or vegetable at less than market price to a person
7 with whom the consignment merchant has a direct or indirect financial
8 connection.

9 5. Makes a sale and directly or indirectly receives a portion of
10 the purchase price other than the commission specified in the contract.

11 D. A person who is charged with violating this article or rules
12 adopted pursuant to this article may request a hearing before an
13 administrative law judge pursuant to title 41, chapter 6, article 10. The
14 decision of the administrative law judge is subject to review by the
15 director as provided by title 41, chapter 6, article 10.

16 E. Civil penalties collected pursuant to this section shall be
17 deposited in the citrus, fruit and vegetable trust fund.

18 Sec. 40. Title 3, chapter 3, Arizona Revised Statutes, is amended
19 by adding article 4.1, to read:

20 ARTICLE 4.1. PRODUCE SAFETY

21 3-525. Definitions

22 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

23 1. "ASSOCIATE DIRECTOR" MEANS THE ASSOCIATE DIRECTOR OF THE CITRUS,
24 FRUIT AND VEGETABLE DIVISION OF THE DEPARTMENT.

25 2. "FARM" HAS THE SAME MEANING PRESCRIBED IN 21 CODE OF FEDERAL
26 REGULATIONS SECTION 112.3 AND INCLUDES PRODUCTION FARMS AND HARVESTING,
27 HOLDING AND PACKING OPERATIONS.

28 3. "HARVESTING":

29 (a) HAS THE SAME MEANING PRESCRIBED IN 21 CODE OF FEDERAL
30 REGULATIONS SECTION 112.3 AND IS LIMITED TO ACTIVITIES PERFORMED ON
31 PRODUCE WITHOUT ADDITIONAL MANUFACTURING OR PROCESSING ON A FARM.

32 (b) INCLUDES:

33 (i) ACTIVITIES THAT ARE TRADITIONALLY PERFORMED ON FARMS FOR THE
34 PURPOSES OF REMOVING PRODUCE FROM THE PLACE IT WAS GROWN OR RAISED AND
35 PREPARING IT FOR USE AS FOOD.

36 (ii) SEPARATING THE EDIBLE PORTION OF THE PRODUCE FROM THE CROP
37 PLANT AND REMOVING OR TRIMMING PART OF THE PRODUCE.

38 (iii) COOLING, FIELD CORING, GATHERING, HULLING, SHELLING, REMOVING
39 STEMS FROM, TRIMMING OUTER LEAVES FROM AND WASHING PRODUCE GROWN ON A
40 FARM.

41 (c) DOES NOT INCLUDE ACTIVITIES THAT TRANSFORM PRODUCE INTO A
42 PROCESSED FOOD.

43 4. "HOLDING":

44 (a) HAS THE SAME MEANING PRESCRIBED IN 21 CODE OF FEDERAL
45 REGULATIONS SECTION 112.3.

1 (b) INCLUDES:
2 (i) STORAGE OF PRODUCE IN FACILITIES SUCH AS WAREHOUSES AND COLD
3 STORAGE FACILITIES.
4 (ii) ACTIVITIES PERFORMED INCIDENTAL TO THE STORAGE OF PRODUCE,
5 SUCH AS FUMIGATING CITRUS DURING STORAGE.
6 (iii) ACTIVITIES PERFORMED AS A PRACTICAL NECESSITY FOR THE
7 DISTRIBUTION OF PRODUCE, SUCH AS BLENDING PRODUCE AND BREAKING DOWN
8 PALLETS.
9 (c) DOES NOT INCLUDE ACTIVITIES THAT TRANSFORM PRODUCE INTO A
10 PROCESSED FOOD.
11 5. "PACKING":
12 (a) HAS THE SAME MEANING PRESCRIBED IN 21 CODE OF FEDERAL
13 REGULATIONS SECTION 112.3.
14 (b) INCLUDES:
15 (i) PLACING PRODUCE INTO A CONTAINER.
16 (ii) REPACKING.
17 (iii) ACTIVITIES PERFORMED INCIDENTAL TO PACKING OR REPACKING
18 PRODUCE, SUCH AS SORTING, CULLING, GRADING AND WEIGHING OR CONVEYING AND
19 OTHER INCIDENTAL ACTIVITIES PERFORMED FOR THE SAFE OR EFFECTIVE PACKING OR
20 REPACKING OF PRODUCE.
21 (c) DOES NOT INCLUDE:
22 (i) ACTIVITIES THAT TRANSFORM PRODUCE INTO A PROCESSED FOOD.
23 (ii) PACKAGING PRODUCE FOR RETAIL SALE.
24 6. "PRODUCE":
25 (a) MEANS ANY HARVESTED PART OF A FRUIT OR VEGETABLE THAT IS
26 CONSUMED RAW, INCLUDING MUSHROOMS, SPROUTS, TREE NUTS AND HERBS, AND THAT
27 IS SUBJECT TO THE REQUIREMENTS OF THE PRODUCE SAFETY RULE AS PROVIDED BY
28 21 CODE OF FEDERAL REGULATIONS SECTIONS 112.1 AND 112.2.
29 (b) DOES NOT INCLUDE FOOD GRAINS OR SEEDS OF ARABLE CROPS.
30 7. "PRODUCE SAFETY RULE" MEANS THE UNITED STATES FOOD AND DRUG
31 ADMINISTRATION PRODUCE SAFETY RULE (21 CODE OF FEDERAL REGULATIONS PART
32 112) AND ANY OTHER FEDERAL PRODUCE SAFETY REGULATION, ORDER OR GUIDELINE
33 OR OTHER REQUIREMENT ADOPTED PURSUANT TO THE FDA FOOD SAFETY MODERNIZATION
34 ACT (P.L. 111-353; 21 UNITED STATES CODE SECTIONS 2201 THROUGH 2252).
35 3-525.01. Produce safety rule; state administration; powers
36 and duties; advisory council
37 A. THE DEPARTMENT IS DESIGNATED AS THE AGENCY FOR THIS STATE FOR
38 ALL PURPOSES OF THE PRODUCE SAFETY RULE.
39 B. THE DIRECTOR MAY:
40 1. NEGOTIATE, CONSULT AND COLLABORATE WITH THE UNITED STATES FOOD
41 AND DRUG ADMINISTRATION AND DO ALL THINGS CONSISTENT WITH THIS ARTICLE
42 THAT ARE NECESSARY TO OBTAIN AND MAINTAIN FEDERAL APPROVAL AND DELEGATION
43 OF AUTHORITY TO REGULATE PRODUCE THAT IS SUBJECT TO THE PRODUCE SAFETY
44 RULE WITH RESPECT TO PRODUCE THAT IS GROWN, HARVESTED, PACKED OR HELD IN
45 THIS STATE.

1 2. CONSULT, COOPERATE, COLLABORATE AND, IF NECESSARY, ENTER INTO
2 FORMAL INTERGOVERNMENTAL AND INTERAGENCY AGREEMENTS AND MEMORANDA OF
3 UNDERSTANDING WITH FEDERAL AGENCIES, WITH AGENCIES, INSTRUMENTALITIES AND
4 POLITICAL SUBDIVISIONS OF THIS STATE AND WITH NONGOVERNMENTAL
5 ORGANIZATIONS CONCERNING THE APPLICATION OF THE PRODUCE SAFETY RULE AS
6 NECESSARY TO ADMINISTER THIS ARTICLE.

7 3. APPLY FOR, ACCEPT AND SPEND FEDERAL AND OTHER NONSTATE FINANCIAL
8 AID AND ALLOWANCES THAT MAY BE AVAILABLE FOR THE PURPOSE OF ADMINISTERING
9 THIS ARTICLE.

10 4. ACCEPT ADVISORY, TECHNICAL AND TRAINING ASSISTANCE IN PLANNING
11 AND OTHERWISE DEVELOPING THE PRODUCE SAFETY ACTIVITIES UNDER THIS ARTICLE,
12 INCLUDING CURRICULAR AND INSTRUCTIONAL MATERIALS, EQUIPMENT AND OTHER
13 MATERIALS AND ASSISTANCE THAT ARE USEFUL FOR ADMINISTERING THIS ARTICLE.

14 5. FACILITATE COOPERATION AMONG FEDERAL, STATE, LOCAL AND PRIVATE
15 ENTITIES TO HELP COORDINATE AND ENHANCE THE PROTECTION OF AGRICULTURE AND
16 FOOD SYSTEMS.

17 6. USE ANY AVAILABLE FEDERAL PROCESS TO PETITION FOR A VARIANCE,
18 WAIVER OR EXEMPTION FROM FEDERAL REQUIREMENTS THAT MAY BE DESIRABLE,
19 ADVANTAGEOUS OR NECESSARY TO ACCOMMODATE STATE OR LOCAL CONDITIONS OR
20 CONSIDERATIONS.

21 7. TO MINIMIZE THE ECONOMIC AND OPERATIONAL BURDENS CREATED FROM
22 MULTIPLE FOOD SAFETY PROGRAM AUDITS OR INSPECTIONS, USE ANY AVAILABLE
23 FEDERAL PROCESS TO OBTAIN APPROVAL FROM THE UNITED STATES FOOD AND DRUG
24 ADMINISTRATION THAT THE STANDARDS OF A FOOD SAFETY PROGRAM UNDER THE
25 DEPARTMENT'S AUTHORITY ALIGN WITH THE PRODUCE SAFETY RULE SUCH THAT THE
26 PROGRAM SATISFIES THE PRODUCE SAFETY RULE'S REQUIREMENTS.

27 C. THE ASSOCIATE DIRECTOR SHALL:

28 1. ESTABLISH TRAINING ACTIVITIES AND OUTREACH AND TECHNICAL
29 ASSISTANCE PROGRAMS TO ENCOURAGE THE ACCEPTANCE, COOPERATION,
30 PARTICIPATION AND COMPLIANCE BY OWNERS, LESSEES, OPERATORS AND DESIGNATED
31 REPRESENTATIVES OF FARMS, HARVESTERS, HOLDERS, PACKERS, COMMODITY GROUPS
32 AND OTHER MEMBERS OF THE REGULATED COMMUNITY.

33 2. ESTABLISH A CONTINUING PROGRAM FOR TRAINING EMPLOYEES AND AGENTS
34 OF THE DEPARTMENT TO ENSURE A HIGH LEVEL OF KNOWLEDGE OF THE LAW AND SKILL
35 IN IDENTIFYING, ASSESSING AND ADDRESSING RISKS TO PUBLIC HEALTH WITH THE
36 LEAST DISRUPTION OF A SAFE FOOD SUPPLY.

37 3. PLAN, DEVELOP, COORDINATE AND ADMINISTER THE STATE PROGRAM FOR
38 ADMINISTERING THE REQUIREMENTS OF THIS ARTICLE, INCLUDING TECHNICAL,
39 LABORATORY AND TRAINING ACTIVITIES.

40 D. AS AUTHORIZED BY THE DIRECTOR, THE ASSOCIATE DIRECTOR MAY:

41 1. USE THE COOPERATIVE EXTENSION SERVICE UNDER CHAPTER 1, ARTICLE 3
42 OF THIS TITLE TO THE EXTENT POSSIBLE TO ACCOMPLISH THE PURPOSES OF THIS
43 ARTICLE.

1 2. ISSUE CERTIFICATES AS EVIDENCE OF COMPLETION OF FORMAL TRAINING
2 PROGRAMS BY OWNERS, LESSEES, OPERATORS AND DESIGNATED REPRESENTATIVES OF
3 FARMS.

4 E. THE CITRUS, FRUIT AND VEGETABLE ADVISORY COUNCIL SHALL ASSIST
5 AND ADVISE THE DIRECTOR AND ASSOCIATE DIRECTOR ON MATTERS UNDER THIS
6 ARTICLE PURSUANT TO ARTICLE 4.3 OF THIS CHAPTER.

7 3-525.02. Produce safety trust fund

8 A. THE PRODUCE SAFETY TRUST FUND IS ESTABLISHED FOR THE EXCLUSIVE
9 PURPOSE OF IMPLEMENTING, CONTINUING AND SUPPORTING THE AGRICULTURAL
10 PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE. THE TRUST FUND CONSISTS OF:

11 1. MONIES APPROPRIATED BY THE LEGISLATURE FOR THAT PURPOSE.

12 2. MONIES COLLECTED PURSUANT TO THIS ARTICLE.

13 3. GIFTS, GRANTS AND OTHER DONATIONS FROM PUBLIC OR PRIVATE SOURCES
14 AND DESIGNATED FOR DEPOSIT IN THE TRUST FUND.

15 B. MONIES IN THE PRODUCE SAFETY TRUST FUND ARE CONTINUOUSLY
16 APPROPRIATED TO THE DEPARTMENT AND SHALL BE USED SOLELY FOR THE PURPOSE OF
17 ADMINISTERING AND ENFORCING THIS ARTICLE.

18 C. THE DIRECTOR SHALL ADMINISTER THE PRODUCE SAFETY TRUST FUND AS
19 TRUSTEE. THE STATE TREASURER SHALL ACCEPT, SEPARATELY ACCOUNT FOR AND
20 HOLD IN TRUST ANY MONIES DEPOSITED IN THE STATE TREASURY UNDER THIS
21 SECTION, WHICH ARE CONSIDERED TO BE TRUST MONIES AS DEFINED IN SECTION
22 35-310 AND WHICH MAY NOT BE COMMINGLED WITH ANY OTHER MONIES IN THE STATE
23 TREASURY EXCEPT FOR INVESTMENT PURPOSES. ON NOTICE FROM THE DIRECTOR, THE
24 STATE TREASURER SHALL INVEST ANY TRUST FUND MONIES IN THE STATE TREASURY
25 PURSUANT TO SECTIONS 35-313 AND 35-314.03, AND ALL INTEREST EARNED ON
26 THESE MONIES SHALL BE CREDITED TO THE TRUST FUND.

27 D. THE BENEFICIARY OF THE TRUST IS THE AGRICULTURAL PROGRAM
28 ESTABLISHED PURSUANT TO THIS ARTICLE.

29 E. MONIES IN THE PRODUCE SAFETY TRUST FUND ARE EXEMPT FROM THE
30 PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.
31 SURPLUS MONIES, INCLUDING ANY UNEXPENDED AND UNENCUMBERED BALANCE AT THE
32 END OF THE FISCAL YEAR, DO NOT REVERT TO THE STATE GENERAL FUND BUT SHALL
33 BE CARRIED FORWARD TO THE FOLLOWING YEAR.

34 F. THE DEPARTMENT SHALL MAINTAIN A DETAILED ACCOUNTING OF ALL
35 MONIES DEPOSITED IN AND DISBURSED FROM THE PRODUCE SAFETY TRUST FUND.

36 3-525.03. Inventory of farms; covered farms; information
37 requirements; qualified exemptions

38 A. THE DEPARTMENT SHALL MAINTAIN AN INVENTORY OF FARMS IN THIS
39 STATE THAT ARE SUBJECT TO THE REQUIREMENTS OF THIS ARTICLE.

40 B. A FARM HAVING AVERAGE ANNUAL SALES DURING THE PREVIOUS
41 THREE-YEAR PERIOD OF TWENTY-FIVE THOUSAND DOLLARS OR MORE ON A ROLLING
42 BASIS, ADJUSTED ANNUALLY ACCORDING TO ANNUAL CHANGES IN THE GDP PRICE
43 DEFLATOR AS DEFINED IN SECTION 41-563, IS A COVERED FARM FOR THE PURPOSES
44 OF THIS SECTION.

1 C. EACH COVERED FARM AS DESCRIBED IN SUBSECTION B OF THIS SECTION
2 SHALL SUBMIT INFORMATION REQUESTED BY THE ASSOCIATE DIRECTOR NOT LATER
3 THAN OCTOBER 1 OF EACH YEAR. THE ASSOCIATE DIRECTOR SHALL PRESCRIBE THE
4 MANNER AND FORM FOR SUBMISSION, INCLUDING ELECTRONIC SUBMISSION, REQUIRING
5 ONLY THE MINIMUM INFORMATION CONSIDERED NECESSARY TO ACCOMPLISH THE
6 PURPOSES OF THIS ARTICLE. A FARM SHALL NOTIFY THE DEPARTMENT WITHIN SIXTY
7 DAYS AFTER A MATERIAL CHANGE TO ANY OF THE INFORMATION PREVIOUSLY
8 SUBMITTED DURING THE YEAR.

9 D. A FARM THAT DOES NOT MEET THE REQUIREMENTS OF SUBSECTION B OF
10 THIS SECTION IS NOT A COVERED FARM AND IS NOT SUBJECT TO THE REQUIREMENTS
11 OF THIS ARTICLE.

12 E. THE ASSOCIATE DIRECTOR MAY ISSUE A QUALIFIED EXEMPTION FROM THE
13 REQUIREMENTS OF THIS ARTICLE TO A COVERED FARM THAT SATISFIES THE
14 REQUIREMENTS, TERMS AND CONDITIONS PRESCRIBED IN 21 CODE OF FEDERAL
15 REGULATIONS SECTION 112.5. TO OBTAIN A QUALIFIED EXEMPTION, A FARM THAT
16 IS ELIGIBLE FOR A QUALIFIED EXEMPTION UNDER THIS SUBSECTION MUST COMPLY
17 WITH ALL OF THE FOLLOWING:

18 1. APPLY FOR THE EXEMPTION ON A FORM ISSUED BY THE ASSOCIATE
19 DIRECTOR.

20 2. RECEIVE APPROVAL FOR THE EXEMPTION.

21 3. MAINTAIN AND DEMONSTRATE COMPLIANCE WITH THE REQUIREMENTS
22 PRESCRIBED BY THIS ARTICLE AND THE RULES ADOPTED PURSUANT TO THIS ARTICLE.

23 3-525.04. Inspections and investigations; records; notice;
24 report

25 A. THE OWNER, LESSEE, OPERATOR OR DESIGNATED REPRESENTATIVE OF A
26 COVERED FARM UNDER SECTION 3-525.03 SHALL ALLOW AN AUTHORIZED EMPLOYEE OR
27 AGENT OF THE DEPARTMENT TO ENTER THE PREMISES AT REASONABLE TIMES TO:

28 1. INSPECT RECORDS, INVESTIGATE AND DETERMINE COMPLIANCE WITH THE
29 PRODUCE SAFETY RULE, THIS ARTICLE AND RULES ADOPTED PURSUANT TO THIS
30 ARTICLE.

31 2. FOLLOW UP OR COMPLETE PRIOR INSPECTIONS OR DETERMINE THE STATUS
32 OF OR COMPLIANCE WITH CORRECTIVE MEASURES.

33 B. THE OWNER, LESSEE, OPERATOR OR DESIGNATED REPRESENTATIVE OF A
34 FARM SHALL:

35 1. MAINTAIN RECORDS REQUIRED BY THE PRODUCE SAFETY RULE, THIS
36 ARTICLE AND RULES ADOPTED PURSUANT TO THIS ARTICLE.

37 2. MAKE THOSE RECORDS AVAILABLE TO AN AUTHORIZED EMPLOYEE OR AGENT
38 OF THE DEPARTMENT WITHIN TWENTY-FOUR HOURS AFTER AN ELECTRONIC OR WRITTEN
39 REQUEST.

40 C. INSPECTIONS AND INVESTIGATIONS UNDER THIS SECTION SHALL BE ON
41 REASONABLE NOTICE TO THE OWNER, LESSEE, OPERATOR OR DESIGNATED
42 REPRESENTATIVE OF THE FARM UNLESS REASONABLE GROUNDS EXIST TO BELIEVE THAT
43 SUCH A NOTICE WOULD IMPEDE THE ENFORCEMENT OF THIS ARTICLE. THE DIRECTOR
44 MAY, AND IF REQUIRED BY LAW SHALL, APPLY FOR AND OBTAIN WARRANTS FOR ENTRY
45 AND INSPECTION.

1 D. THE OWNER, LESSEE, OPERATOR OR DESIGNATED REPRESENTATIVE OF A
2 FARM THAT IS SUBJECT TO A QUALIFIED EXEMPTION UNDER SECTION 3-525.03 SHALL
3 ALLOW AN AUTHORIZED EMPLOYEE OR AGENT OF THE DEPARTMENT TO ENTER THE
4 PREMISES AT REASONABLE TIMES:

5 1. TO REVIEW RELEVANT RECORDS TO CONFIRM THAT THE FARM COMPLIES
6 WITH THE REQUIREMENTS FOR ITS QUALIFIED EXEMPTION.

7 2. FOR AN ACTIVE INVESTIGATION OF A FOOD-BORNE ILLNESS OUTBREAK
8 THAT IS LINKED TO THE FARM, FOR THE PURPOSE OF INSPECTING AND SECURING
9 REPRESENTATIVE AND RELEVANT SAMPLES OR SPECIMENS.

10 E. THE DEPARTMENT SHALL USE THE STATE AGRICULTURAL LABORATORY, A
11 LABORATORY CERTIFIED BY THE STATE AGRICULTURAL LABORATORY OR ANY OTHER
12 LABORATORY RECOGNIZED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION
13 FOR ANY NECESSARY LABORATORY ANALYSIS OF SAMPLES OR SPECIMENS SECURED
14 THROUGH AN INSPECTION PURSUANT TO THIS SECTION.

15 F. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, INSPECTIONS ARE
16 SUBJECT TO THE REQUIREMENTS OF SECTION 41-1009.

17 G. ON REQUEST, THE ASSOCIATE DIRECTOR SHALL ISSUE A COPY OF THE
18 INSPECTION REPORT TO THE FARM'S OWNER, LESSEE, OPERATOR OR DESIGNATED
19 REPRESENTATIVE.

20 H. THIS SECTION DOES NOT LIMIT THE DEPARTMENT'S AUTHORITY TO
21 RESPOND TO AN EMERGENCY OR A PUBLIC HEALTH HAZARD, INCLUDING COMMUNICATION
22 WITH APPLICABLE STATE AND FEDERAL AGENCIES.

23 3-525.05. Production and harvesting standards; violations;
24 corrective actions; civil penalty; appeals

25 A. CONSISTENT WITH THE PRODUCE SAFETY RULE, THE DIRECTOR SHALL
26 ADMINISTER SCIENCE-BASED MINIMUM STANDARDS FOR THE SAFE PRODUCTION AND
27 HARVESTING OF PRODUCE TO MINIMIZE THE RISK OF SERIOUS ADVERSE HEALTH
28 CONSEQUENCES OR DEATH.

29 B. IF THE DIRECTOR FINDS THAT PRODUCE IS BEING GROWN, HARVESTED,
30 PACKED OR HELD IN VIOLATION OF THIS ARTICLE AND RULES ADOPTED PURSUANT TO
31 THIS ARTICLE, THE DIRECTOR MAY CONSULT AND COORDINATE WITH APPLICABLE
32 FEDERAL, STATE, TRIBAL AND LOCAL OFFICIALS TO PRODUCE A CORRECTIVE ACTION
33 PLAN THAT INCLUDES REINSPECTION, EDUCATION, TRAINING AND ALTERNATE
34 ENFORCEMENT APPROACHES WITH THE GOAL OF ADDRESSING THE PRESENT VIOLATION
35 AND PREVENTING FUTURE VIOLATIONS.

36 C. THE DIRECTOR SHALL ADOPT RULES TO ADDRESS, CORRECT AND REMEDIATE
37 VIOLATIONS OF THIS ARTICLE AND RULES ADOPTED PURSUANT TO THIS ARTICLE THAT
38 ARE PROGRESSIVELY GRADUATED ACCORDING TO THE NATURE AND URGENCY OF THE
39 VIOLATION AND THE RISK TO PUBLIC HEALTH AND SAFETY.

40 D. TO REMEDY VIOLATIONS THAT ARE ASSOCIATED WITH RISKS OR HAZARDS
41 TO PUBLIC HEALTH AND TO PREVENT THE ENTRY OF CONTAMINATED PRODUCE INTO THE
42 MARKETPLACE, THE DIRECTOR MAY TAKE ANY ACTION TO ENFORCE THIS ARTICLE AND
43 RULES ADOPTED PURSUANT TO THIS ARTICLE, INCLUDING:

- 44 1. A STOP SALE ORDER.
45 2. THE SEIZURE AND EMBARGO OF OFFENDING PRODUCE.

1 E. THE DIRECTOR MAY ASSESS A CIVIL PENALTY OF NOT MORE THAN ONE
2 THOUSAND DOLLARS FOR EACH VIOLATION OF THIS ARTICLE OR A RULE ADOPTED
3 PURSUANT TO THIS ARTICLE. THE DEPARTMENT SHALL TRANSMIT ANY MONIES
4 RECEIVED UNDER THIS SECTION TO THE STATE TREASURER FOR DEPOSIT IN THE
5 PRODUCE SAFETY TRUST FUND ESTABLISHED BY SECTION 3-525.02.

6 F. A PERSON WHO VIOLATES THIS ARTICLE OR RULES ADOPTED PURSUANT TO
7 THIS ARTICLE MAY REQUEST A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE
8 PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. THE DECISION OF THE
9 ADMINISTRATIVE LAW JUDGE IS SUBJECT TO REVIEW BY THE DIRECTOR AS PROVIDED
10 BY TITLE 41, CHAPTER 6, ARTICLE 10.

11 3-525.06. Access to public information; exceptions;
12 disclosure

13 A. DOCUMENTS, DATA AND RECORDS RECEIVED BY THE DEPARTMENT AND
14 EMPLOYEES AND AGENTS OF THE DEPARTMENT FROM A FARM UNDER THIS ARTICLE ARE
15 PUBLIC RECORDS AND ARE SUBJECT TO DISCLOSURE AS PROVIDED BY LAW, EXCEPT
16 FOR:

17 1. TRADE SECRETS, THE DISCLOSURE OF WHICH WOULD GIVE AN UNFAIR
18 ADVANTAGE TO COMPETITORS OR WOULD OTHERWISE CAUSE SUBSTANTIAL HARM TO THE
19 FARM'S COMPETITIVE POSITION.

20 2. FINANCIAL INFORMATION.

21 3. DOCUMENTS, DATA AND RECORDS DERIVED FROM INSPECTIONS AND
22 INVESTIGATIONS UNDER THIS ARTICLE.

23 B. ANY DOCUMENTS, DATA AND RECORDS MAY BE DISCLOSED ON A
24 CONFIDENTIAL BASIS TO AGENCIES OR INSTRUMENTALITIES OF ANY OF THE
25 FOLLOWING THAT HAVE DATA SHARING AGREEMENTS OR DATA SHARING CREDENTIALS
26 WITH THE DEPARTMENT OR THE UNITED STATES FOOD AND DRUG ADMINISTRATION:

27 1. THE UNITED STATES.

28 2. THIS STATE.

29 3. POLITICAL SUBDIVISIONS OF THIS STATE WITH WHICH THE DIRECTOR HAS
30 A MEMORANDUM OF UNDERSTANDING FOR THE PURPOSES OF THIS SUBSECTION.

31 4. INDIAN TRIBAL GOVERNMENTS IN THIS STATE.

32 5. ANY OTHER STATE:

33 (a) FROM WHICH PRODUCE WAS TRANSPORTED INTO THIS STATE.

34 (b) INTO WHICH PRODUCE IS TRANSPORTED FROM THIS STATE.

35 C. ANY DOCUMENTS, DATA AND RECORDS MAY BE DISCLOSED PURSUANT TO:

36 1. THE ORDER OF A COURT OF COMPETENT JURISDICTION.

37 2. A SIGNED AND NOTARIZED RELEASE BY A FARM AUTHORIZING THE
38 DISCLOSURE OF SPECIFIC INFORMATION TO A SPECIFIC PERSON OR PERSONS FOR A
39 SPECIFIC REASON OR REASONS.

40 D. AGGREGATE STATISTICAL DATA DERIVED FROM CONFIDENTIAL INFORMATION
41 MAY BE DISCLOSED IF THE DATA DOES NOT IDENTIFY, OR ENABLE THE
42 IDENTIFICATION OF, AND IS NOT ATTRIBUTABLE TO, ANY INDIVIDUAL FARM.
43 INFORMATION MAY NOT BE DISCLOSED PURSUANT TO THIS SUBSECTION IF A FARM
44 DEMONSTRATES THAT DISCLOSURE WOULD GIVE AN UNFAIR ADVANTAGE TO COMPETITORS

1 OR WOULD OTHERWISE CAUSE SUBSTANTIAL HARM TO THE FARM'S COMPETITIVE
2 POSITION.

3 E. A PERSON, INCLUDING A FORMER EMPLOYEE OR AGENT OF THE DEPARTMENT
4 OR A PERSON PREVIOUSLY HAVING AN ADMINISTRATIVE DUTY FOR THE DEPARTMENT,
5 WHO RECEIVES CONFIDENTIAL INFORMATION WHILE AN EMPLOYEE OR AGENT OF THE
6 DEPARTMENT OR WHILE PERFORMING AN ADMINISTRATIVE OR ENFORCEMENT DUTY FOR
7 THE DEPARTMENT MAY NOT DISCLOSE THAT INFORMATION EXCEPT AS PROVIDED IN
8 THIS ARTICLE.

9 3-525.07. Violations; classification; injunctive relief

10 A. A PERSON IS GUILTY OF A CLASS 1 MISDEMEANOR WHO KNOWINGLY:

11 1. IMPEDES, OBSTRUCTS, HINDERS, IMPROPERLY INFLUENCES OR OTHERWISE
12 PREVENTS OR ATTEMPTS TO PREVENT THE DIRECTOR, THE ASSOCIATE DIRECTOR OR
13 ANY AUTHORIZED EMPLOYEE, INSPECTOR OR AGENT OF THE DEPARTMENT IN
14 PERFORMING ANY DUTY IN CONNECTION WITH THIS ARTICLE.

15 2. MAKES ANY MATERIALLY FALSE STATEMENT OR REPRESENTATION IN ANY
16 WRITTEN DOCUMENT REQUIRED TO BE SUBMITTED OR MAINTAINED PURSUANT TO
17 SECTION 3-525.03 OR 3-525.04.

18 B. AN INSPECTOR IS GUILTY OF A CLASS 1 MISDEMEANOR WHO KNOWINGLY:

19 1. MAKES A WRONG OR IMPROPER INSPECTION PURSUANT TO THIS ARTICLE.

20 2. ACCEPTS MONIES OR OTHER CONSIDERATION EITHER DIRECTLY OR
21 INDIRECTLY IN EXCHANGE FOR AN IMPROPER PERFORMANCE OF THE INSPECTOR'S
22 DUTY.

23 3. SEIZES ANY PRODUCE IMPROPERLY OR UNLAWFULLY WHILE ACTING UNDER
24 THIS ARTICLE.

25 4. FAILS TO REQUEST THAT THE PROPER AUTHORITIES BRING AN ACTION TO
26 PROSECUTE A VIOLATION OF THIS ARTICLE OR RULES ADOPTED PURSUANT TO THIS
27 ARTICLE.

28 C. IF A PERSON FAILS OR REFUSES TO COMPLY WITH OR CONTINUES TO
29 VIOLATE ANY PROVISION OF THIS ARTICLE OR A RULE ADOPTED PURSUANT TO THIS
30 ARTICLE, THE DIRECTOR MAY APPLY FOR AND THE COURT MAY GRANT A TEMPORARY
31 RESTRAINING ORDER OR PRELIMINARY OR PERMANENT INJUNCTION. A DECISION TO
32 SEEK INJUNCTIVE RELIEF DOES NOT PRECLUDE OTHER FORMS OF RELIEF OR
33 ENFORCEMENT AGAINST THE VIOLATOR.

34 3-525.08. Rules

35 A. PURSUANT TO SECTION 3-527.02, THE ASSOCIATE DIRECTOR MAY
36 RECOMMEND TO THE DIRECTOR FOR ADOPTION RULES THAT ARE NOT IN CONFLICT WITH
37 THIS ARTICLE AS THE ASSOCIATE DIRECTOR CONSIDERS TO BE NECESSARY TO CARRY
38 OUT THE PURPOSES OF THIS ARTICLE.

39 B. AT LEAST THIRTY DAYS BEFORE ANY HEARING AT WHICH A NEW RULE OR A
40 CHANGE IN AN EXISTING RULE WILL BE CONSIDERED, THE DIRECTOR SHALL SEND A
41 COPY OF THE NOTICE TO PERSONS OR ENTITIES THAT HAVE REQUESTED NOTICE FOR
42 THE PURPOSES OF THIS SUBSECTION.

43 C. RULES ADOPTED PURSUANT TO THIS SECTION ARE EXEMPT FROM THE
44 PROVISIONS OF TITLE 41, CHAPTER 6 RELATING TO ADMINISTRATIVE PROCEDURE.

1 Sec. 41. Section 3-527.01, Arizona Revised Statutes, is amended to
2 read:

3 3-527.01. Citrus, fruit and vegetable advisory council;
4 membership; terms; vacancy; compensation;
5 definition

6 A. The citrus, fruit and vegetable advisory council is established
7 consisting of members appointed by the governor as follows:

- 8 1. One citrus producer.
- 9 2. One apple, grape or tree fruit producer.
- 10 3. One iceberg lettuce producer from Yuma county.

11 4. Four fruit or vegetable producers, excluding producers
12 exclusively engaged in growing citrus, apples, grapes or tree fruit,
13 including one fruit or vegetable producer from Maricopa, Pinal or Pima
14 county and one from Yuma or La Paz county.

15 5. ONE MEMBER FROM SANTA CRUZ COUNTY WHO IS SUBJECT TO ARTICLE 4.1
16 OF THIS CHAPTER. IF NO PERSON FROM SANTA CRUZ COUNTY APPLIES FOR THE
17 POSITION, THE GOVERNOR MAY APPOINT A MEMBER AT LARGE WHO IS ENGAGED IN
18 HARVESTING, HOLDING OR PACKING AS DEFINED IN SECTION 3-525 AND WHO IS
19 SUBJECT TO ARTICLE 4.1 OF THIS CHAPTER.

20 6. ONE MEMBER WHO OPERATES A FARM OR AN ENTITY ENGAGED IN
21 HARVESTING OR PACKING THAT IS SUBJECT TO ARTICLE 4.1 OF THIS CHAPTER AND
22 FOR WHICH, ON A ROLLING BASIS DURING THE THREE-YEAR PERIOD BEFORE THE
23 MEMBER'S APPOINTMENT, THE FARM'S AVERAGE ANNUAL MONETARY VALUE OF PRODUCE
24 SOLD OR THE VALUE OF THE ENTITY'S HARVESTING OR PACKING SERVICES WAS AT
25 LEAST TWO HUNDRED FIFTY THOUSAND DOLLARS BUT NOT MORE THAN FIVE HUNDRED
26 THOUSAND DOLLARS.

27 B. The governor may consult with any recognized citrus, fruit and
28 vegetable ~~growers and shipper organizations~~ ORGANIZATION in this state in
29 making appointments to the council.

30 C. The term of office of each council member is three years and
31 shall begin on January 1 and end on December 31 of the appropriate
32 year. On the expiration of a term of a member or in the event of a
33 vacancy, a successor shall be appointed by the governor.

34 D. The office of any member is deemed vacant and the governor shall
35 appoint a person to fill the remainder of the term under any of the
36 following circumstances:

- 37 1. The member ~~is~~ no longer ~~a producer~~ MEETS THE QUALIFICATIONS FOR
38 APPOINTMENT.
- 39 2. The member is unable to perform the duties on the council.
- 40 3. The member has become a resident of another state.
- 41 4. ~~The absence of~~ The member IS ABSENT from four consecutive
42 council meetings if the absences have not been excused by the council.

43 E. Members of the council are not eligible to receive compensation
44 but are eligible for reimbursement of expenses pursuant to title 38,
45 chapter 4, article 2.

1 F. FOR THE PURPOSES OF THIS SECTION, "PRODUCER" MEANS A PERSON THAT
2 IS ENGAGED IN THE BUSINESS OF PRODUCING CITRUS, FRUITS OR VEGETABLES IN
3 THIS STATE OR CAUSING CITRUS, FRUITS OR VEGETABLES TO BE PRODUCED IN THIS
4 STATE FOR DISTRIBUTION AND SALE THROUGH INTERSTATE COMMERCE.

5 Sec. 42. Section 3-527.02, Arizona Revised Statutes, is amended to
6 read:

7 3-527.02. Powers and duties of the council

8 A. The council shall:

9 1. Annually elect a chairman and ~~vice-chairman~~ VICE CHAIRMAN from
10 among its members.

11 2. Meet at least once each calendar quarter and at such additional
12 times as called by the chairman or if requested by four or more members of
13 the council.

14 3. Keep a permanent record of its proceedings and make these
15 records available for public inspection for any lawful purpose.

16 B. The council shall ~~be advisory to~~ ADVISE the ~~supervisor of~~
17 ~~standardization and the~~ director AND THE ASSOCIATE DIRECTOR OF THE CITRUS,
18 FRUIT AND VEGETABLE DIVISION on all matters pertaining to articles 2, ~~and~~
19 4 AND 4.1 of this chapter, including the following:

20 1. Review all statutes and rules relating to articles 2, ~~and~~ 4 AND
21 4.1 of this chapter.

22 2. Make recommendations concerning inspection services, inspection
23 procedures and training concerning articles 2, ~~and~~ 4 AND 4.1 of this
24 chapter.

25 3. Make recommendations concerning amendments to existing statutes
26 relating to articles 2, ~~and~~ 4 AND 4.1 of this chapter.

27 4. Review all proposed changes in statutes relating to articles 2,
28 ~~and~~ 4 AND 4.1 of this chapter ~~which~~ THAT the department recommends to the
29 legislature.

30 5. Make recommendations concerning additions, modifications or
31 repeals of rules relating to articles 2, ~~and~~ 4 AND 4.1 of this chapter.

32 6. Review all additions, modifications or repeals of rules relating
33 to articles 2, ~~and~~ 4 AND 4.1 of this chapter THAT ARE proposed to be
34 adopted by the director.

35 7. Make recommendations concerning the annual budget and fees THAT
36 ARE necessary to provide procedures and services relating to articles 2,
37 ~~and~~ 4 AND 4.1 of this chapter.

38 8. Review procedures and make recommendations regarding enforcement
39 actions under article 2, ~~or~~ 4 OR 4.1 of this chapter.

40 9. REVIEW AND MAKE RECOMMENDATIONS RELATING SPECIFICALLY TO THE
41 FOLLOWING MATTERS UNDER ARTICLE 4.1 OF THIS CHAPTER:

42 (a) PRODUCE SAFETY POLICIES THAT ARE PROPOSED OR ADOPTED BY
43 STATUTE, RULE, GUIDANCE DOCUMENT OR ORDER OR AS APPLIED IN PRACTICE.

1 (b) THE IMPLEMENTATION AND OPERATION OF THE PRODUCE SAFETY PROGRAM
2 UNDER ARTICLE 4.1 OF THIS CHAPTER, INCLUDING THE ADEQUACY AND SOURCES OF
3 FUNDING FOR THOSE PURPOSES.

4 (c) THE PROGRESS AND SUCCESS OF EDUCATION, TRAINING AND OUTREACH
5 EFFORTS PURSUANT TO SECTION 3-525.01, SUBSECTION C, PARAGRAPHS 1 AND 2.

6 (d) THE PERCEPTION, EVIDENCE AND CONSEQUENCES OF OVERREGULATION OF
7 FARMS UNDER THE REQUIREMENTS OF ARTICLE 4.1 OF THIS CHAPTER.

8 ~~9.~~ 10. Recommend any other items that the council deems to be
9 appropriate for furthering the purposes of article 2, ~~or~~ 4 OR 4.1 of this
10 chapter.

11 C. If the council makes any recommendations pursuant to subsection
12 B OF THIS SECTION, the ~~supervisor of standardization or the~~ director OR
13 THE ASSOCIATE DIRECTOR OF THE CITRUS, FRUIT AND VEGETABLE DIVISION, as
14 appropriate, shall accept the recommendations if they are found to be
15 practicable and in the interests of the citrus, fruit and vegetable
16 industry. ~~The supervisor or director, as appropriate, shall provide the~~
17 ~~council with a written statement of the actions taken on the~~
18 ~~recommendations of the council within twenty working days.~~ IF THE
19 DIRECTOR OR ASSOCIATE DIRECTOR DOES NOT ACCEPT ALL OR ANY PART OF THE
20 COUNCIL'S RECOMMENDATIONS, THE DIRECTOR OR ASSOCIATE DIRECTOR SHALL
21 PROVIDE A WRITTEN STATEMENT OF REASONS TO THE COUNCIL WITHIN FIFTEEN DAYS.

22 D. Recommendations made pursuant to subsection B, paragraph 2 OR 8
23 OF THIS SECTION shall not include actions relating to individual
24 inspection personnel OR INDIVIDUAL ENFORCEMENT ACTIONS.

25 Sec. 43. Section 36-104, Arizona Revised Statutes, is amended to
26 read:

27 36-104. Powers and duties

28 This section is not to be construed as a statement of the
29 department's organization. This section is intended to be a statement of
30 powers and duties in addition to the powers and duties granted by section
31 36-103. The director shall:

32 1. Administer the following services:

33 (a) Administrative services, which shall include at a minimum the
34 functions of accounting, personnel, standards certification, electronic
35 data processing, vital statistics and the development, operation and
36 maintenance of buildings and grounds ~~utilized~~ USED by the department.

37 (b) Public health support services, which shall include at a
38 minimum:

39 (i) Consumer health protection programs, CONSISTENT WITH PARAGRAPH
40 25 OF THIS SECTION, that include at least the functions of community water
41 supplies, general sanitation, vector control and food and drugs.

42 (ii) Epidemiology and disease control programs that include at
43 least the functions of chronic disease, accident and injury control,
44 communicable diseases, tuberculosis, venereal disease and others.

45 (iii) Laboratory services programs.

1 (iv) Health education and training programs.

2 (v) Disposition of human bodies programs.

3 (c) Community health services, which shall include at a minimum:

4 (i) Medical services programs that include at least the functions
5 of maternal and child health, preschool health screening, family planning,
6 public health nursing, premature and newborn program, immunizations,
7 nutrition, dental care prevention and migrant health.

8 (ii) Dependency health care services programs that include at least
9 the functions of need determination, availability of health resources to
10 medically dependent individuals, quality control, utilization control and
11 industry monitoring.

12 (iii) Children with physical disabilities services programs.

13 (iv) Programs for the prevention and early detection of an
14 intellectual disability.

15 (d) Program planning, which shall include at least the following:

16 (i) An organizational unit for comprehensive health planning
17 programs.

18 (ii) Program coordination, evaluation and development.

19 (iii) Need determination programs.

20 (iv) Health information programs.

21 2. Include and administer, within the office of the director, staff
22 services, which shall include at a minimum budget preparation, public
23 information, appeals, hearings, legislative and federal government
24 liaison, grant development and management and departmental and interagency
25 coordination.

26 3. Make rules and regulations for the organization and proper and
27 efficient operation of the department.

28 4. Determine when a health care emergency or medical emergency
29 situation exists or occurs within ~~the~~ THIS state that cannot be
30 satisfactorily controlled, corrected or treated by the health care
31 delivery systems and facilities available. When such a situation is
32 determined to exist, the director shall immediately report that situation
33 to the legislature and the governor. The report shall include information
34 on the scope of the emergency, recommendations for solution of the
35 emergency and estimates of costs involved.

36 5. Provide a system of unified and coordinated health services and
37 programs between ~~the~~ THIS state and county governmental health units at
38 all levels of government.

39 6. Formulate policies, plans and programs to effectuate the
40 missions and purposes of the department.

41 7. Make contracts and incur obligations within the general scope of
42 the department's activities and operations subject to the availability of
43 ~~funds~~ MONIES.

44 8. Be designated as the single state agency for the purposes of
45 administering and in furtherance of each federally supported state plan.

- 1 9. Provide information and advice on request by local, state and
2 federal agencies and by private citizens, business enterprises and
3 community organizations on matters within the scope of the department's
4 duties subject to the departmental rules and regulations on the
5 confidentiality of information.
- 6 10. Establish and maintain separate financial accounts as required
7 by federal law or regulations.
- 8 11. Advise with and make recommendations to the governor and the
9 legislature on all matters concerning the department's objectives.
- 10 12. Take appropriate steps to reduce or contain costs in the field
11 of health services.
- 12 13. Encourage and assist in the adoption of practical methods of
13 improving systems of comprehensive planning, of program planning, of
14 priority setting and of allocating resources.
- 15 14. Encourage an effective use of available federal resources in
16 this state.
- 17 15. Research, recommend, advise and assist in the establishment of
18 community or area health facilities, both public and private, and
19 encourage the integration of planning, services and programs for the
20 development of the state's health delivery capability.
- 21 16. Promote the effective ~~utilization~~ USE of health manpower and
22 health facilities that provide health care for the citizens of this state.
- 23 17. Take appropriate steps to provide health care services to the
24 medically dependent citizens of this state.
- 25 18. Certify training on the nature of sudden infant death syndrome,
26 which shall include information on the investigation and handling of cases
27 involving sudden and unexplained infant death for use by law enforcement
28 officers as part of their basic training requirement.
- 29 19. Adopt protocols on the manner in which an autopsy shall be
30 conducted under section 11-597, subsection D in cases of sudden and
31 unexplained infant death.
- 32 20. Cooperate with the Arizona-Mexico commission in the governor's
33 office and with researchers at universities in this state to collect data
34 and conduct projects in the United States and Mexico on issues that are
35 within the scope of the department's duties and that relate to quality of
36 life, trade and economic development in this state in a manner that will
37 help the Arizona-Mexico commission to assess and enhance the economic
38 competitiveness of this state and of the Arizona-Mexico region.
- 39 21. Administer the federal family violence prevention and services
40 act grants, and the department is designated as this state's recipient of
41 federal family violence prevention and services act grants.
- 42 22. Accept and spend private grants of monies, gifts and devises
43 for the purposes of methamphetamine education. The department shall
44 disburse these monies to local prosecutorial or law enforcement agencies
45 with existing programs, ~~faith-based~~ FAITH-BASED organizations and

1 nonprofit entities that are qualified under section 501(c)(3) of the
2 United States internal revenue code, including nonprofit entities
3 providing services to women with a history of dual diagnosis disorders,
4 and that provide educational programs on the repercussions of
5 methamphetamine use. State general fund monies shall not be spent for the
6 purposes of this paragraph. If the director does not receive sufficient
7 monies from private sources to carry out the purposes of this paragraph,
8 the director shall not provide the educational programs prescribed in this
9 paragraph. Grant monies received pursuant to this paragraph are ~~to~~ NOT
10 lapsing and do not revert to the state general fund at the close of the
11 fiscal year.

12 23. Identify successful methamphetamine prevention programs in
13 other states that may be implemented in this state.

14 24. Pursuant to chapter 13, article 8 of this title, coordinate all
15 public health and risk assessment issues associated with a chemical or
16 other toxic fire event if a request for the event is received from the
17 incident commander, the emergency response commission or the department of
18 public safety and if funding is available. Coordination of public health
19 issues shall include general environmental health consultation and risk
20 assessment services consistent with chapter 13, article 8 of this title
21 and, in consultation with the Arizona poison control system, informing the
22 public as to potential public health risks from the environmental
23 exposure. Pursuant to chapter 13, article 8 of this title, the department
24 of health services shall also prepare a report, in consultation with
25 appropriate state, federal and local governmental agencies, that evaluates
26 the public health risks from the environmental exposure. The department
27 of health services' report shall include any department of environmental
28 quality report and map of smoke dispersion from the fire, the results of
29 any environmental samples taken by the department of environmental quality
30 and the toxicological implications and public health risks of the
31 environmental exposure. The department of health services shall consult
32 with the Arizona poison control system regarding toxicology issues and
33 shall prepare and produce its report for the public as soon as practicable
34 after the event. The department of health services shall not use any
35 monies pursuant to section 49-282, subsection E to implement this
36 paragraph.

37 25. CONSULT, COOPERATE, COLLABORATE AND, IF NECESSARY, ENTER INTO
38 INTERAGENCY AGREEMENTS AND MEMORANDA OF UNDERSTANDING WITH THE ARIZONA
39 DEPARTMENT OF AGRICULTURE CONCERNING ITS ADMINISTRATION, PURSUANT TO TITLE
40 3, CHAPTER 3, ARTICLE 4.1, OF THIS STATE'S AUTHORITY UNDER THE UNITED
41 STATES FOOD AND DRUG ADMINISTRATION PRODUCE SAFETY RULE (21 CODE OF
42 FEDERAL REGULATIONS PART 112) AND ANY OTHER FEDERAL PRODUCE SAFETY
43 REGULATION, ORDER OR GUIDELINE OR OTHER REQUIREMENT ADOPTED PURSUANT TO
44 THE FDA FOOD SAFETY MODERNIZATION ACT (P.L. 111-353; 21 UNITED STATES CODE
45 SECTIONS 2201 THROUGH 2252).

1 Sec. 44. Section 36-136, Arizona Revised Statutes, is amended to
2 read:

3 36-136. Powers and duties of director; compensation of
4 personnel; rules; definition

5 A. The director shall:

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

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

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

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

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

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

33 7. Prepare sanitary and public health rules.

34 8. Perform other duties prescribed by law.

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

42 C. The director, after consultation with the department of
43 administration, may take all necessary steps to enhance the highest and
44 best use of the state hospital property, including contracting with third
45 parties to provide services, entering into short-term lease agreements

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

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

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

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

35 2. Monies appropriated or otherwise made available to the
36 department for distribution to or division among counties or public health
37 services districts for local health work may be allocated or reallocated
38 in a manner designed to ensure the accomplishment of recognized local
39 public health activities and delegated functions, powers and duties in
40 accordance with applicable standards of performance. Whenever in the
41 director's opinion there is cause, the director may terminate all or a
42 part of any delegation and may reallocate all or a part of any funds that
43 may have been conditioned on the further performance of the functions,
44 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 that are not potentially
21 hazardous and that are prepared in a kitchen of a private home for
22 commercial purposes if packaged with a label that clearly states the
23 address of the maker, includes contact information for the maker, lists
24 all the ingredients in the product and discloses that the product was
25 prepared in a home. The label must be given to the final consumer of the
26 product. If the product was made in a facility for individuals with
27 developmental disabilities, the label must also disclose that fact. The
28 person preparing the food or supervising the food preparation must obtain
29 a food handler's card or certificate if one is issued by the local county
30 and must register with an online registry established by the department
31 pursuant to paragraph 13 of this subsection. For the purposes of this
32 subdivision, "potentially hazardous" means baked and confectionary goods
33 that meet the requirements of the food code published by the United States
34 food and drug administration, as modified and incorporated by reference by
35 the department by rule.

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

38 (i) PRODUCE IN A PACKING OR HOLDING FACILITY THAT IS SUBJECT TO THE
39 UNITED STATES FOOD AND DRUG ADMINISTRATION PRODUCE SAFETY RULE (21 CODE OF
40 FEDERAL REGULATIONS PART 112) AS ADMINISTERED BY THE ARIZONA DEPARTMENT OF
41 AGRICULTURE PURSUANT TO TITLE 3, CHAPTER 3, ARTICLE 4.1. FOR THE PURPOSES
42 OF THIS SUBDIVISION, "HOLDING", "PACKING" AND "PRODUCE" HAVE THE SAME
43 MEANINGS PRESCRIBED IN SECTION 3-525.

44 5. Prescribe reasonably necessary measures to ensure that all meat
45 and meat products for human consumption handled at the retail level are

1 delivered in a manner and from sources approved by the Arizona department
2 of agriculture and are free from unwholesome, poisonous or other foreign
3 substances and filth, insects or disease-causing organisms. The rules
4 shall prescribe standards for sanitary facilities to be used in identity,
5 storage, handling and sale of all meat and meat products sold at the
6 retail level.

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

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

34 8. Define and prescribe reasonably necessary measures concerning
35 sewage and excreta disposal, garbage and trash collection, storage and
36 disposal, and water supply for recreational and summer camps, campgrounds,
37 motels, tourist courts, trailer coach parks and hotels. The rules shall
38 prescribe minimum standards for preparation of food in community kitchens,
39 adequacy of excreta disposal, garbage and trash collection, storage and
40 disposal and water supply for recreational and summer camps, campgrounds,
41 motels, tourist courts, trailer coach parks and hotels and shall provide
42 for inspection of these premises and for abatement as public nuisances of
43 any premises or facilities that do not comply with the rules. Primitive
44 camp and picnic grounds offered by this state or a political subdivision
45 of this state are exempt from rules adopted pursuant to this paragraph but

1 are subject to approval by a county health department under sanitary
2 regulations adopted pursuant to section 36-183.02. Rules adopted pursuant
3 to this paragraph do not apply to two or fewer recreational vehicles as
4 defined in section 33-2102 that are not park models or park trailers, that
5 are parked on owner-occupied residential property for less than sixty days
6 and for which no rent or other compensation is paid. For the purposes of
7 this paragraph, "primitive camp and picnic grounds" means camp and picnic
8 grounds that are remote in nature and without accessibility to public
9 infrastructure such as water, electricity and sewer.

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

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

29 11. Prescribe reasonably necessary measures to keep confidential
30 information relating to diagnostic findings and treatment of patients, as
31 well as information relating to contacts, suspects and associates of
32 communicable disease patients. In no event shall confidential information
33 be made available for political or commercial purposes.

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

38 13. Establish an online registry of food preparers that are
39 authorized to prepare food for commercial purposes pursuant to paragraph 4
40 of this subsection.

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

44 J. The rules adopted under the authority conferred by this section
45 shall be observed throughout the state and shall be enforced by each local

1 board of health or public health services district, but this section does
2 not limit the right of any local board of health or county board of
3 supervisors to adopt ordinances and rules as authorized by law within its
4 jurisdiction, provided that the ordinances and rules do not conflict with
5 state law and are equal to or more restrictive than the rules of the
6 director.

7 K. The powers and duties prescribed by this section do not apply in
8 instances in which regulatory powers and duties relating to public health
9 are vested by the legislature in any other state board, commission, agency
10 or instrumentality, except that with regard to the regulation of meat and
11 meat products, the department of health services and the Arizona
12 department of agriculture within the area delegated to each shall adopt
13 rules that are not in conflict.

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

19 M. After consultation with the state superintendent of public
20 instruction, the director shall prescribe the criteria the department
21 shall use in deciding whether or not to notify a local school district
22 that a pupil in the district has tested positive for the human
23 immunodeficiency virus antibody. The director shall prescribe the
24 procedure by which the department shall notify a school district if,
25 pursuant to these criteria, the department determines that notification is
26 warranted in a particular situation. This procedure shall include a
27 requirement that before notification the department shall determine to its
28 satisfaction that the district has an appropriate policy relating to
29 nondiscrimination of the infected pupil and confidentiality of test
30 results and that proper educational counseling has been or will be
31 provided to staff and pupils.

32 N. Until the department adopts exemptions by rule as required by
33 subsection I, paragraph 4, subdivision (f) of this section, food and drink
34 are exempt from the rules prescribed in subsection I of this section if
35 offered at locations that sell only commercially prepackaged food or drink
36 that is not potentially hazardous, without a limitation on its display
37 area.

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

43 P. Until the department adopts an exclusion by rule as required by
44 subsection I, paragraph 14 of this section, the standardized survey known

1 as "the hospital consumer assessment of healthcare providers and systems"
2 may not include patients who experience a fetal demise.

3 Q. For the purposes of this section, "fetal demise" means a fetal
4 death that occurs or is confirmed in a licensed hospital. Fetal demise
5 does not include an abortion as defined in section 36-2151.

6 Sec. 45. Section 41-1005, Arizona Revised Statutes, is amended to
7 read:

8 41-1005. Exemptions

9 A. This chapter does not apply to any:

10 1. Rule that relates to the use of public works, including streets
11 and highways, under the jurisdiction of an agency if the effect of the
12 order is indicated to the public by means of signs or signals.

13 2. Order or rule of the Arizona game and fish commission that does
14 the following:

15 (a) Opens, closes or alters seasons or establishes bag or
16 possession limits for wildlife.

17 (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.

18 (c) Establishes a license classification, fee or application fee
19 pursuant to title 17, chapter 3, article 2.

20 3. Rule relating to section 28-641 or to any rule regulating motor
21 vehicle operation that relates to speed, parking, standing, stopping or
22 passing enacted pursuant to title 28, chapter 3.

23 4. Rule concerning only the internal management of an agency that
24 does not directly and substantially affect the procedural or substantive
25 rights or duties of any segment of the public.

26 5. Rule that only establishes specific prices to be charged for
27 particular goods or services sold by an agency.

28 6. Rule concerning only the physical servicing, maintenance or care
29 of agency owned or operated facilities or property.

30 7. Rule or substantive policy statement concerning inmates or
31 committed youths of a correctional or detention facility in secure custody
32 or patients admitted to a hospital, if made by the state department of
33 corrections, the department of juvenile corrections, the board of
34 executive clemency or the department of health services or a facility or
35 hospital under the jurisdiction of the state department of corrections,
36 the department of juvenile corrections or the department of health
37 services.

38 8. Form whose contents or substantive requirements are prescribed
39 by rule or statute, and instructions for the execution or use of the form.

40 9. Capped fee-for-service schedule adopted by the Arizona health
41 care cost containment system administration pursuant to title 36,
42 chapter 29.

43 10. Fees prescribed by section 6-125.

44 11. Order of the director of water resources adopting or modifying
45 a management plan pursuant to title 45, chapter 2, article 9.

- 1 12. Fees established under section 3-1086.
- 2 13. Fees established under sections 41-4010 and 41-4042.
- 3 14. Rule or other matter relating to agency contracts.
- 4 15. Fees established under section 32-2067 or 32-2132.
- 5 16. Rules made pursuant to section 5-111, subsection A.
- 6 17. Rules made by the Arizona state parks board concerning the
7 operation of the Tonto natural bridge state park, the facilities located
8 in the Tonto natural bridge state park and the entrance fees to the Tonto
9 natural bridge state park.
- 10 18. Fees or charges established under section 41-511.05.
- 11 19. Emergency medical services protocols except as provided in
12 section 36-2205, subsection B.
- 13 20. Fee schedules established pursuant to section 36-3409.
- 14 21. Procedures of the state transportation board as prescribed in
15 section 28-7048.
- 16 22. Rules made by the state department of corrections.
- 17 23. Fees prescribed pursuant to section 32-1527.
- 18 24. Rules made by the department of economic security pursuant to
19 section 46-805.
- 20 25. Schedule of fees prescribed by section 23-908.
- 21 26. Procedure that is established pursuant to title 23, chapter 6,
22 article 6.
- 23 27. Rules, administrative policies, procedures and guidelines
24 adopted for any purpose by the Arizona commerce authority pursuant to
25 chapter 10 of this title if the authority provides, as appropriate under
26 the circumstances, for notice of an opportunity for comment on the
27 proposed rules, administrative policies, procedures and guidelines.
- 28 28. Rules made by a marketing commission or marketing committee
29 pursuant to section 3-414.
- 30 29. Administration of public assistance program monies authorized
31 for liabilities that are incurred for disasters declared pursuant to
32 sections 26-303 and 35-192.
- 33 30. User charges, tolls, fares, rents, advertising and sponsorship
34 charges, services charges or similar charges established pursuant to
35 section 28-7705.
- 36 31. Administration and implementation of the hospital assessment
37 pursuant to section 36-2901.08, except that the Arizona health care cost
38 containment system administration must provide notice and an opportunity
39 for public comment at least thirty days before establishing or
40 implementing the administration of the assessment.
- 41 32. Rules made by the Arizona department of agriculture to adopt
42 and implement the provisions of the federal milk ordinance as prescribed
43 by section 3-605.
- 44 33. RULES MADE BY THE ARIZONA DEPARTMENT OF AGRICULTURE TO ADOPT,
45 IMPLEMENT AND ADMINISTER THE UNITED STATES FOOD AND DRUG ADMINISTRATION

1 PRODUCE SAFETY RULE (21 CODE OF FEDERAL REGULATIONS PART 112) AND ANY
2 OTHER FEDERAL PRODUCE SAFETY REGULATION, ORDER OR GUIDELINE OR OTHER
3 REQUIREMENT ADOPTED PURSUANT TO THE FDA FOOD SAFETY MODERNIZATION ACT
4 (P.L. 111-353; 21 UNITED STATES CODE SECTIONS 2201 THROUGH 2252) AS
5 PROVIDED BY TITLE 3, CHAPTER 3, ARTICLE 4.1.

6 B. Notwithstanding subsection A, paragraph 21 of this section, at
7 such time as the federal highway administration authorizes the
8 privatization of rest areas, the state transportation board shall make
9 rules governing the lease or license by the department of transportation
10 to a private entity for the purposes of privatization of a rest area.

11 C. Coincident with the making of a final rule pursuant to an
12 exemption from the applicability of this chapter under this section,
13 another statute or session law, the agency shall file a copy of the rule
14 with the secretary of state for publication pursuant to section 41-1012
15 and provide a copy to the council.

16 D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
17 chapter do not apply to the Arizona board of regents and the institutions
18 under its jurisdiction, except that the Arizona board of regents shall
19 make policies or rules for the board and the institutions under its
20 jurisdiction that provide, as appropriate under the circumstances, for
21 notice of and opportunity for comment on the policies or rules proposed.

22 E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
23 chapter do not apply to the Arizona state schools for the deaf and the
24 blind, except that the board of directors of all the state schools for the
25 deaf and the blind shall adopt policies for the board and the schools
26 under its jurisdiction that provide, as appropriate under the
27 circumstances, for notice of and opportunity for comment on the policies
28 proposed for adoption.

29 F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
30 chapter do not apply to the state board of education, except that the
31 state board of education shall adopt policies or rules for the board and
32 the institutions under its jurisdiction that provide, as appropriate under
33 the circumstances, for notice of and opportunity for comment on the
34 policies or rules proposed for adoption. In order to implement or change
35 any rule, the state board of education shall provide at least two
36 opportunities for public comment.

37 Sec. 46. Section 49-221, Arizona Revised Statutes, is amended to
38 read:

39 49-221. Water quality standards in general

40 A. The director shall adopt, by rule, water quality standards for
41 all navigable waters and for all waters in all aquifers to preserve and
42 protect the quality of those waters for all present and reasonably
43 foreseeable future uses.

44 B. The director may adopt, by rule, water quality standards for
45 waters of the state other than those described in subsection A of this

1 section, including standards for the use of water pumped from an aquifer
2 that does not meet the standards adopted pursuant to section 49-223,
3 subsections A and B and that is put to a beneficial use other than
4 drinking water. These standards may include standards for the use of
5 water pumped as part of a remedial action. In adopting such standards,
6 the director shall consider the economic, social and environmental costs
7 and benefits that would result from the adoption of a water quality
8 standard at a particular level or for a particular water category.

9 C. In setting standards pursuant to subsection A or B of this
10 section, the director shall consider, but not be limited to, the
11 following:

12 1. The protection of the public health and the environment.

13 2. The uses ~~which~~ THAT have been made, are being made or with
14 reasonable probability may be made of these waters.

15 3. The provisions and requirements of the clean water act and safe
16 drinking water act and the regulations adopted pursuant to those acts.

17 4. The degree to which standards for one category of waters could
18 cause violations of standards for other, hydrologically connected, water
19 categories.

20 5. Guidelines, action levels or numerical criteria adopted or
21 recommended by the United States environmental protection agency or any
22 other federal agency.

23 6. Any unique physical, biological or chemical properties of the
24 waters.

25 D. Water quality standards shall be expressed in terms of the uses
26 to be protected and, if adequate information exists to do so, numerical
27 limitations or parameters, in addition to any narrative standards ~~which~~
28 THAT the director ~~may deem~~ DEEMS appropriate.

29 E. The director may adopt by rule water quality standards for the
30 direct reuse of reclaimed water. In establishing these standards, the
31 director shall consider the following:

32 1. The protection of public health and the environment.

33 2. The uses that are being made or may be made of the reclaimed
34 water.

35 3. The degree to which standards for the direct reuse of reclaimed
36 water may cause violations of water quality standards for other
37 hydrologically connected water categories.

38 F. IF THE DIRECTOR PROPOSES TO ADOPT WATER QUALITY STANDARDS FOR
39 AGRICULTURAL WATER, THE DIRECTOR SHALL CONSULT, COOPERATE, COLLABORATE
40 AND, IF NECESSARY, ENTER INTO INTERAGENCY AGREEMENTS AND MEMORANDA OF
41 UNDERSTANDING WITH THE ARIZONA DEPARTMENT OF AGRICULTURE RELATING TO ITS
42 ADMINISTRATION, PURSUANT TO TITLE 3, CHAPTER 3, ARTICLE 4.1, OF THIS
43 STATE'S AUTHORITY RELATING TO AGRICULTURAL WATER UNDER THE UNITED STATES
44 FOOD AND DRUG ADMINISTRATION PRODUCE SAFETY RULE (21 CODE OF FEDERAL
45 REGULATIONS PART 112, SUBPART E) AND ANY OTHER FEDERAL PRODUCE SAFETY

1 REGULATION, ORDER OR GUIDELINE OR OTHER REQUIREMENT ADOPTED PURSUANT TO
2 THE FDA FOOD SAFETY MODERNIZATION ACT (P.L. 111-353; 21 UNITED STATES CODE
3 SECTIONS 2201 THROUGH 2252). FOR THE PURPOSES OF THIS SUBSECTION:
4 1. "AGRICULTURAL WATER":
5 (a) MEANS WATER THAT IS USED IN A COVERED ACTIVITY ON PRODUCE WHERE
6 WATER IS INTENDED TO, OR IS LIKELY TO, CONTACT PRODUCE OR FOOD CONTACT
7 SURFACES.
8 (b) INCLUDES ALL OF THE FOLLOWING:
9 (i) WATER USED IN GROWING ACTIVITIES, INCLUDING IRRIGATION WATER,
10 WATER USED FOR PREPARING CROP SPRAYS AND WATER USED FOR GROWING SPROUTS.
11 (ii) WATER USED IN HARVESTING, PACKING AND HOLDING ACTIVITIES,
12 INCLUDING WATER USED FOR WASHING OR COOLING HARVESTED PRODUCE AND WATER
13 USED FOR PREVENTING DEHYDRATION OF PRODUCE.
14 2. "COVERED ACTIVITY" MEANS GROWING, HARVESTING, PACKING OR HOLDING
15 PRODUCE. COVERED ACTIVITY INCLUDES PROCESSING PRODUCE TO THE EXTENT THAT
16 THE ACTIVITY IS WITHIN THE MEANING OF FARM AS DEFINED IN SECTION 3-525.
17 3. "HARVESTING" HAS THE SAME MEANING PRESCRIBED IN SECTION 3-525.
18 4. "HOLDING" HAS THE SAME MEANING PRESCRIBED IN SECTION 3-525.
19 5. "PACKING" HAS THE SAME MEANING PRESCRIBED IN SECTION 3-525.
20 6. "PRODUCE" HAS THE SAME MEANING PRESCRIBED IN SECTION 3-525.

APPROVED BY THE GOVERNOR MARCH 23, 2018.

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