

REFERENCE TITLE: cottage foods; violations; civil penalty

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1644

Introduced by
Senator Hernandez: Representative Ortiz

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

7 A. The director shall:

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

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

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

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

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

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

35 7. Prepare sanitary and public health rules.

36 8. Perform other duties prescribed by law.

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

44 C. The director, after consultation with the department of
45 administration, may take all necessary steps to enhance the highest and

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

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

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

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

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

1 have been conditioned on the further performance of the functions, powers
2 or duties conferred.

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

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

7 H. Notwithstanding subsection I, paragraph 1 of this section, the
8 director may define and prescribe emergency measures for detecting,
9 reporting, preventing and controlling communicable or infectious diseases
10 or conditions if the director has reasonable cause to believe that a
11 serious threat to public health and welfare exists. Emergency measures
12 are effective for not longer than eighteen months.

13 I. The director, by rule, shall:

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

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

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

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

1 manufacturing plant. The rules shall prescribe minimum standards for any
2 truck or other vehicle in which food or drink is produced, processed,
3 stored, handled, served or transported. The rules shall provide for the
4 inspection and licensing of premises and vehicles so used, and for
5 abatement as public nuisances of any premises or vehicles that do not
6 comply with the rules and minimum standards. The rules shall provide an
7 exemption relating to food or drink that is:

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

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

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

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

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

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

22 (g) A cottage food product that is not potentially hazardous or a
23 time or temperature control for safety food and that is prepared in a
24 kitchen of a private home for commercial purposes, including fruit jams
25 and jellies, dry mixes made with ingredients from approved sources, honey,
26 dry pasta and roasted nuts. Cottage food products must be packaged at
27 home with an attached label that clearly states the name and registration
28 number of the food preparer, lists all the ingredients in the product and
29 the product's production date and includes the following statement: "This
30 product was produced in a home kitchen that may process common food
31 allergens and is not subject to public health inspection." If the product
32 was made in a facility for individuals with developmental disabilities,
33 the label must also disclose that fact. The person preparing the food or
34 supervising the food preparation must complete a food handler training
35 course from an accredited program and maintain active certification. The
36 food preparer must register with an online registry established by the
37 department pursuant to paragraph 13 of this subsection. The food preparer
38 must display the preparer's certificate of registration when operating as
39 a temporary food establishment. For the purposes of this subdivision,
40 "not potentially hazardous" means cottage food products that meet the
41 requirements of the food code published by the United States food and drug
42 administration, as modified and incorporated by reference by the
43 department by rule.

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

1 (i) Produce in a packing or holding facility that is subject to the
2 United States food and drug administration produce safety rule (21 Code of
3 Federal Regulations part 112) as administered by the Arizona department of
4 agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes
5 of this subdivision, "holding", "packing" and "produce" have the same
6 meanings prescribed in section 3-525.

7 (j) Spirituous liquor produced on the premises licensed by the
8 department of liquor licenses and control. This exemption includes both of
9 the following:

10 (i) The area in which production and manufacturing of spirituous
11 liquor occurs, as defined in an active basic permit on file with the
12 United States alcohol and tobacco tax and trade bureau.

13 (ii) The area licensed by the department of liquor licenses and
14 control as a microbrewery, farm winery or craft distiller that is open to
15 the public and serves spirituous liquor and commercially prepackaged food,
16 crackers or pretzels for consumption on the premises. A producer of
17 spirituous liquor may not provide, allow or expose for common use any cup,
18 glass or other receptacle used for drinking purposes. For the purposes of
19 this item, "common use" means the use of a drinking receptacle for
20 drinking purposes by or for more than one person without the receptacle
21 being thoroughly cleansed and sanitized between consecutive uses by
22 methods prescribed by or acceptable to the department.

23 5. Prescribe reasonably necessary measures to ensure that all meat
24 and meat products for human consumption handled at the retail level are
25 delivered in a manner and from sources approved by the Arizona department
26 of agriculture and are free from unwholesome, poisonous or other foreign
27 substances and filth, insects or disease-causing organisms. The rules
28 shall prescribe standards for sanitary facilities to be used in ~~identity~~
29 ~~IDENTIFYING~~, ~~storage~~ ~~STORING~~, handling and ~~sale of~~ ~~SELLING~~ all meat and
30 meat products sold at the retail level.

31 6. Prescribe reasonably necessary measures regarding production,
32 processing, labeling, handling, serving and transportation of bottled
33 water to ensure that all bottled drinking water distributed for human
34 consumption is free from unwholesome, poisonous, deleterious or other
35 foreign substances and filth or disease-causing organisms. The rules
36 shall prescribe minimum standards for the sanitary facilities and
37 conditions that shall be maintained at any source of water, bottling plant
38 and truck or vehicle in which bottled water is produced, processed, stored
39 or transported and shall provide for inspection and certification of
40 bottled drinking water sources, plants, processes and transportation and
41 for abatement as a public nuisance of any water supply, label, premises,
42 equipment, process or vehicle that does not comply with the minimum
43 standards. The rules shall prescribe minimum standards for
44 bacteriological, physical and chemical quality for bottled water and for

1 ~~the submission of~~ SUBMITTING samples at intervals prescribed in the
2 standards.

3 7. Define and prescribe reasonably necessary measures governing ice
4 production, handling, storing and distribution to ensure that all ice sold
5 or distributed for human consumption or for preserving or storing food for
6 human consumption is free from unwholesome, poisonous, deleterious or
7 other foreign substances and filth or disease-causing organisms. The
8 rules shall prescribe minimum standards for the sanitary facilities and
9 conditions and the quality of ice that shall be maintained at any ice
10 plant, storage and truck or vehicle in which ice is produced, stored,
11 handled or transported and shall provide for inspection and licensing of
12 the premises and vehicles, and for abatement as public nuisances of ice,
13 premises, equipment, processes or vehicles that do not comply with the
14 minimum standards.

15 8. Define and prescribe reasonably necessary measures concerning
16 sewage and excreta disposal, garbage and trash collection, storage and
17 disposal, and water supply for recreational and summer camps, campgrounds,
18 motels, tourist courts, trailer coach parks and hotels. The rules shall
19 prescribe minimum standards for preparing food in community kitchens,
20 adequacy of excreta disposal, garbage and trash collection, storage and
21 disposal and water supply for recreational and summer camps, campgrounds,
22 motels, tourist courts, trailer coach parks and hotels and shall provide
23 for inspection of these premises and for abatement as public nuisances of
24 any premises or facilities that do not comply with the rules. Primitive
25 camp and picnic grounds offered by this state or a political subdivision
26 of this state are exempt from rules adopted pursuant to this paragraph but
27 are subject to approval by a county health department under sanitary
28 regulations adopted pursuant to section 36-183.02. Rules adopted pursuant
29 to this paragraph do not apply to two or fewer recreational vehicles as
30 defined in section 33-2102 that are not park models or park trailers, that
31 are parked on owner-occupied residential property for less than sixty days
32 and for which no rent or other compensation is paid. For the purposes of
33 this paragraph, "primitive camp and picnic grounds" means camp and picnic
34 grounds that are remote in nature and without accessibility to public
35 infrastructure such as water, electricity and sewer.

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

43 10. Prescribe reasonably necessary measures to prevent pollution of
44 water used in public or semipublic swimming pools and bathing places and
45 to prevent deleterious health conditions at these places. The rules shall

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

10 11. Prescribe reasonably necessary measures to keep confidential
11 information relating to diagnostic findings and treatment of patients, as
12 well as information relating to contacts, suspects and associates of
13 communicable disease patients. ~~in no event shall~~ Confidential information
14 MAY NOT be made available for political or commercial purposes.

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

19 13. Establish an online registry of food preparers that are
20 authorized to prepare cottage food products for commercial purposes
21 pursuant to paragraph 4 of this subsection. A registered food preparer
22 shall renew the registration every three years and shall provide to the
23 department updated registration information within thirty days after any
24 change.

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

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

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

43 L. The director, in establishing fees authorized by this section,
44 shall comply with title 41, chapter 6. The department shall not set a fee
45 at more than the department's cost of providing the service for which the

1 fee is charged. State agencies are exempt from all fees imposed pursuant
2 to this section.

3 M. After consultation with the state superintendent of public
4 instruction, the director shall prescribe the criteria the department
5 shall use in deciding whether or not to notify a local school district
6 that a pupil in the district has tested positive for the human
7 immunodeficiency virus antibody. The director shall prescribe the
8 procedure by which the department shall notify a school district if,
9 pursuant to these criteria, the department determines that notification is
10 warranted in a particular situation. This procedure shall include a
11 requirement that before notification the department shall determine to its
12 satisfaction that the district has an appropriate policy relating to
13 nondiscrimination of the infected pupil and confidentiality of test
14 results and that proper educational counseling has been or will be
15 provided to staff and pupils.

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

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

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

31 Q. Until the department adopts exemptions by rule as required by
32 subsection I, paragraph 4, subdivision (j) of this section, spirituous
33 liquor and commercially prepackaged food, crackers or pretzels that meet
34 the requirements of subsection I, paragraph 4, subdivision (j) of this
35 section are exempt from the rules prescribed in subsection I of this
36 section.

37 R. NOTWITHSTANDING SECTION 36-140, A VIOLATION OF THE RULES
38 ESTABLISHED BY THE DIRECTOR PURSUANT TO SUBSECTION I, PARAGRAPH 4,
39 SUBDIVISION (g) OF THIS SECTION IS NOT PUNISHABLE AS A CRIMINAL VIOLATION,
40 AND A PERSON FOUND IN VIOLATION OF ANY RULE ADOPTED PURSUANT TO SUBSECTION
41 I, PARAGRAPH 4, SUBDIVISION (g) OF THIS SECTION IS NOT SUBJECT TO ARREST
42 EXCEPT WHEN INDEPENDENT GROUNDS FOR THAT ARREST EXIST UNDER LAW. A
43 VIOLATION OF ANY RULE ADOPTED PURSUANT TO SUBSECTION I, PARAGRAPH 4,
44 SUBDIVISION (g) OF THIS SECTION MAY BE PUNISHABLE ONLY AS FOLLOWS:

1 1. FOR A FIRST VIOLATION, A NOTICE OF VIOLATION THAT DETAILS THE
2 ALLEGED VIOLATION.

3 2. FOR A SECOND VIOLATION, A CIVIL PENALTY OF NOT MORE THAN \$100.

4 3. FOR A THIRD VIOLATION, A CIVIL PENALTY OF NOT MORE THAN \$200.

5 4. FOR EACH ADDITIONAL VIOLATION WITHIN ONE YEAR OF THE FIRST
6 VIOLATION, A CIVIL PENALTY OF NOT MORE THAN \$500.

7 S. FOR VIOLATIONS PURSUANT TO SUBSECTION R OF THIS SECTION, THE
8 DIRECTOR SHALL ISSUE, PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10, A
9 NOTICE OF VIOLATION AND THE PENALTY. WHEN ASSESSING A CIVIL PENALTY
10 PURSUANT TO SUBSECTION R OF THIS SECTION, THE DIRECTOR SHALL TAKE INTO
11 CONSIDERATION THE PERSON'S ABILITY TO PAY THE CIVIL PENALTY, IF REQUESTED
12 BY THE PERSON. THE DEPARTMENT SHALL PROVIDE THE PERSON WITH NOTICE OF THE
13 PERSON'S RIGHT TO REQUEST AN ABILITY TO PAY DETERMINATION AND SHALL MAKE
14 AVAILABLE INSTRUCTIONS OR OTHER MATERIALS FOR REQUESTING AN ABILITY TO PAY
15 DETERMINATION.

16 ~~R.~~ T. For the purposes of this section:

17 1. "Cottage food product":

18 (a) Means a food that is not potentially hazardous or a time or
19 temperature control for safety food as defined by the department in rule
20 and that is prepared in a home kitchen by an individual who is registered
21 with the department.

22 (b) Does not include foods that require refrigeration, perishable
23 baked goods, salsas, sauces, fermented and pickled foods, meat, fish and
24 shellfish products, beverages, acidified food products, nut butters or
25 other reduced-oxygen packaged products.

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