

REFERENCE TITLE: **bake sales; regulation; exemption**

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# **SB 1096**

Introduced by  
Senator Burns

**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

6 A. The director shall:

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

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

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

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

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

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

34 7. Prepare sanitary and public health rules.

35 8. Perform other duties prescribed by law.

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

43 C. The director may deputize, in writing, any qualified officer or  
44 employee in the department to do or perform on the director's behalf any act

1 the director is by law empowered to do or charged with the responsibility of  
2 doing.

3 D. The director may delegate to a local health department, county  
4 environmental department or public health services district any functions,  
5 powers or duties that the director believes can be competently, efficiently  
6 and properly performed by the local health department, county environmental  
7 department or public health services district if:

8 1. The director or superintendent of the local health agency,  
9 environmental agency or public health services district is willing to accept  
10 the delegation and agrees to perform or exercise the functions, powers and  
11 duties conferred in accordance with the standards of performance established  
12 by the director.

13 2. Monies appropriated or otherwise made available to the department  
14 for distribution to or division among counties or public health services  
15 districts for local health work may be allocated or reallocated in a manner  
16 designed to assure the accomplishment of recognized local public health  
17 activities and delegated functions, powers and duties in accordance with  
18 applicable standards of performance. Whenever in the director's opinion  
19 there is cause, the director may terminate all or a part of any such  
20 delegation and may reallocate all or a part of any funds that may have been  
21 conditioned on the further performance of the functions, powers or duties  
22 conferred.

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

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

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

33 H. The director shall, by rule:

34 1. Define and prescribe reasonably necessary measures for detecting,  
35 reporting, preventing and controlling communicable and preventable diseases.  
36 The rules shall declare certain diseases reportable. The rules shall  
37 prescribe measures, including isolation or quarantine, reasonably required to  
38 prevent the occurrence of, or to seek early detection and alleviation of,  
39 disability, insofar as possible, from communicable or preventable diseases.  
40 The rules shall include reasonably necessary measures to control animal  
41 diseases transmittable to humans.

42 2. Define and prescribe reasonably necessary measures, in addition to  
43 those prescribed by law, regarding the preparation, embalming, cremation,  
44 interment, disinterment and transportation of dead human bodies and the  
45 conduct of funerals, relating to and restricted to communicable diseases and

1 regarding the removal, transportation, cremation, interment or disinterment  
2 of any dead human body.

3 3. Define and prescribe reasonably necessary procedures not  
4 inconsistent with law in regard to the use and accessibility of vital  
5 records, delayed birth registration and the completion, change and amendment  
6 of vital records.

7 4. Except as relating to the beneficial use of wildlife meat by public  
8 institutions and charitable organizations pursuant to title 17, prescribe  
9 reasonably necessary measures to ~~assure~~ ENSURE that all food or drink,  
10 including meat and meat products and milk and milk products sold at the  
11 retail level, provided for human consumption is free from unwholesome,  
12 poisonous or other foreign substances and filth, insects or disease-causing  
13 organisms. The rules shall prescribe reasonably necessary measures governing  
14 the production, processing, labeling, storing, handling, serving and  
15 transportation of such food and drink. The rules shall prescribe minimum  
16 standards for the sanitary facilities and conditions that shall be maintained  
17 in any warehouse, restaurant or other premises, except a meat packing plant,  
18 slaughterhouse, wholesale meat processing plant, dairy product manufacturing  
19 plant or trade product manufacturing plant. The rules shall prescribe  
20 minimum standards for any truck or other vehicle in which food or drink is  
21 produced, processed, stored, handled, served or transported. The rules shall  
22 provide for the inspection and licensing of premises and vehicles so used,  
23 and for abatement as public nuisances of any premises or vehicles that do not  
24 comply with the rules and minimum standards. The rules shall provide an  
25 exemption relating to food and drink that is:

26 (a) Served at a noncommercial social event and that takes place at a  
27 workplace, such as a potluck.

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

30 (c) Not potentially hazardous.

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

34 (e) PREPARED FOR AND OFFERED AT A BAKE SALE.

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

42 6. Prescribe reasonably necessary measures regarding production,  
43 processing, labeling, handling, serving and transportation of bottled water  
44 to assure that all bottled drinking water distributed for human consumption  
45 is free from unwholesome, poisonous, deleterious or other foreign substances

1 and filth or disease-causing organisms. The rules shall prescribe minimum  
2 standards for the sanitary facilities and conditions that shall be maintained  
3 at any source of water, bottling plant and truck or vehicle in which bottled  
4 water is produced, processed, stored or transported and shall provide for  
5 inspection and certification of bottled drinking water sources, plants,  
6 processes and transportation and for abatement as a public nuisance of any  
7 water supply, label, premises, equipment, process or vehicle that does not  
8 comply with the minimum standards. The rules shall prescribe minimum  
9 standards for bacteriological, physical and chemical quality for bottled  
10 water and for the submission of samples at intervals prescribed in the  
11 standards.

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

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

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

40 10. Prescribe reasonably necessary measures to prevent pollution of  
41 water used in public or semipublic swimming pools and bathing places and to  
42 prevent deleterious health conditions at such places. The rules shall  
43 prescribe minimum standards for sanitary conditions that shall be maintained  
44 at any public or semipublic swimming pool or bathing place and shall provide  
45 for inspection of such premises and for abatement as public nuisances of any

1 premises and facilities that do not comply with the minimum standards. The  
2 rules shall be developed in cooperation with the director of the department  
3 of environmental quality and shall be consistent with the rules adopted by  
4 the director of the department of environmental quality pursuant to section  
5 49-104, subsection B, paragraph 12.

6 11. Prescribe reasonably necessary measures to keep confidential  
7 information relating to diagnostic findings and treatment of patients, as  
8 well as information relating to contacts, suspects and associates of  
9 communicable disease patients. In no event shall confidential information be  
10 made available for political or commercial purposes.

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

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

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

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

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

1           M. Until the department adopts exemptions by rule as required by  
2 subsection H, paragraph 4, subdivision (b) of this section, a kitchen in a  
3 private home that is used as a cooking school and that prepares and offers  
4 food to students is exempt from the rules prescribed in subsection H of this  
5 section if all of the following are true:  
6           1. Only one cooking school meal per day is prepared and served.  
7           2. The meal is served to not more than fifteen cooking school  
8 students.  
9           3. The students are informed by a statement contained in a published  
10 advertisement, mailed brochure and placard posted at the cooking school's  
11 registration that the food is prepared in a kitchen that is not regulated and  
12 inspected by the department or by a local health authority.