

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

SENATE BILL 1096

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~~ RESTROOM, public toilet and toilet
30 facility, public eating room and restaurant, dairy, milk plant or food
31 manufacturing or processing plant, and any premises in which the director has
32 reason to believe there exists a violation of any health law or rule of the
33 state that the director has the duty to administer.

34 7. Prepare sanitary and public health rules.

35 8. Perform other duties prescribed by law.

36 B. If the director has reasonable cause to believe that there 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.

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

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

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

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

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

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

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

35 H. The director ~~shall~~, by rule, **SHALL**:

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

1 2. Define and prescribe reasonably necessary measures, in addition to
2 those prescribed by law, regarding the preparation, embalming, cremation,
3 interment, disinterment and transportation of dead human bodies and the
4 conduct of funerals, relating to and restricted to communicable diseases and
5 regarding the removal, transportation, cremation, interment or disinterment
6 of any dead human body.

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

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

30 (a) Served at a noncommercial social event ~~and~~ that takes place at a
31 workplace, such as a potluck.

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

34 (c) Not potentially hazardous AND PREPARED IN A KITCHEN OF A PRIVATE
35 HOME FOR OCCASIONAL SALE OR DISTRIBUTION FOR NONCOMMERCIAL PURPOSES.

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

39 (e) OFFERED AT A CHILD CARE FACILITY AND LIMITED TO COMMERCIALY
40 PREPACKAGED FOOD THAT IS NOT POTENTIALLY HAZARDOUS AND WHOLE FRUITS AND
41 VEGETABLES THAT ARE WASHED AND CUT ON SITE FOR IMMEDIATE CONSUMPTION.

42 (f) OFFERED AT LOCATIONS THAT SELL ONLY COMMERCIALY PREPACKAGED FOOD
43 AND DRINK THAT IS NOT POTENTIALLY HAZARDOUS AND THAT IS DISPLAYED IN AN AREA
44 OF LESS THAN TEN LINEAL FEET.

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

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

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

1 9. Define and prescribe reasonably necessary measures concerning the
2 sewage and excreta disposal, garbage and trash collection, storage and
3 disposal, water supply and food preparation of all public schools. The rules
4 shall prescribe minimum standards for sanitary conditions that shall be
5 maintained in any public school and shall provide for inspection of ~~such~~
6 ~~THESE~~ premises and facilities and for abatement as public nuisances of any
7 premises that do not comply with the minimum standards.

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

19 11. Prescribe reasonably necessary measures to keep confidential
20 information relating to diagnostic findings and treatment of patients, as
21 well as information relating to contacts, suspects and associates of
22 communicable disease patients. In no event shall confidential information be
23 made available for political or commercial purposes.

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

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

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

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

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

18 M. Until the department adopts exemptions by rule as required by
19 subsection H, paragraph 4, subdivision (b) of this section, a kitchen in a
20 private home that is used as a cooking school and that prepares and offers
21 food to students is exempt from the rules prescribed in subsection H of this
22 section if all of the following are true:

23 1. Only one cooking school meal per day is prepared and served.

24 2. The meal is served to not more than fifteen cooking school
25 students.

26 3. The students are informed by a statement contained in a published
27 advertisement, mailed brochure and placard posted at the cooking school's
28 registration that the food is prepared in a kitchen that is not regulated and
29 inspected by the department or by a local health authority.