

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HOUSE BILL 2164

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 restroom, 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.

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 delegation
22 and may reallocate all or a part of any funds that may have been conditioned
23 on the further performance of the functions, powers or duties conferred.

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

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

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

34 H. The director, by rule, shall:

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

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

1 conduct of funerals, relating to and restricted to communicable diseases and
2 regarding the removal, transportation, cremation, interment or disinterment
3 of any dead human body.

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

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

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

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

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

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

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

39 (f) Offered at locations that sell only commercially prepackaged food
40 or drink that is not potentially hazardous ~~and that is displayed in an area~~
41 ~~of less than ten linear feet.~~

42 (g) Baked and confectionary goods that are not potentially hazardous
43 and that are prepared in a kitchen of a private home for commercial purposes
44 if packaged with a label that clearly states the address of the maker,
45 includes contact information for the maker, lists all the ingredients in the

1 product and discloses that the product was prepared in a home. The label
2 must be given to the final consumer of the product. If the product was made
3 in a facility for developmentally disabled individuals, the label must also
4 disclose that fact. The person preparing the food or supervising the food
5 preparation must obtain a food handler's card or certificate if one is issued
6 by the local county and must register with an online registry established by
7 the department pursuant to paragraph 13 of this subsection. For the purposes
8 of this subdivision, "potentially hazardous" means baked and confectionary
9 goods that meet the requirements of the food code published by the United
10 States food and drug administration, as modified and incorporated by
11 reference by the department by rule.

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

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

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

1 8. Define and prescribe reasonably necessary measures concerning
2 sewage and excreta disposal, garbage and trash collection, storage and
3 disposal, and water supply for recreational and summer camps, campgrounds,
4 motels, tourist courts, trailer coach parks and hotels. The rules shall
5 prescribe minimum standards for preparation of food in community kitchens,
6 adequacy of excreta disposal, garbage and trash collection, storage and
7 disposal and water supply for recreational and summer camps, campgrounds,
8 motels, tourist courts, trailer coach parks and hotels and shall provide for
9 inspection of these premises and for abatement as public nuisances of any
10 premises or facilities that do not comply with the rules.

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

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

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

41 I. The rules adopted under the authority conferred by this section
42 shall be observed throughout the state and shall be enforced by each local
43 board of health or public health services district, but this section does not
44 limit the right of any local board of health or county board of supervisors
45 to adopt ordinances and rules as authorized by law within its jurisdiction,

1 provided that the ordinances and rules do not conflict with state law and are
2 equal to or more restrictive than the rules of the director.

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

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

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

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

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

33 ~~2. The meal is served to not more than fifteen cooking school~~
34 ~~students.~~

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

39 M. UNTIL THE DEPARTMENT ADOPTS EXEMPTIONS BY RULE AS REQUIRED BY
40 SUBSECTION H, PARAGRAPH 4, SUBDIVISION (f) OF THIS SECTION, FOOD AND DRINK IS
41 EXEMPT FROM THE RULES PRESCRIBED IN SUBSECTION H OF THIS SECTION IF OFFERED
42 AT LOCATIONS THAT SELL ONLY COMMERCIALY PREPACKAGED FOOD OR DRINK THAT IS
43 NOT POTENTIALLY HAZARDOUS, WITHOUT A LIMITATION ON ITS DISPLAY AREA.