

REFERENCE TITLE: garden produce; regulatory exemption

State of Arizona  
Senate  
Fifty-second Legislature  
Second Regular Session  
2016

## **SB 1004**

Introduced by  
Senators Farnsworth D, Begay, Farley, Miranda, Sherwood: Bradley,  
Kavanagh, Shooter; Representatives Boyer, Cobb, Lawrence, Norgaard,  
Otondo, Petersen, Thorpe, Townsend

### **AN ACT**

**AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-269.15; AMENDING SECTION 36-136, ARIZONA REVISED STATUTES; RELATING TO THE REGULATION OF FOOD.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 11, chapter 2, article 4, Arizona Revised Statutes,  
3 is amended by adding section 11-269.15, to read:

4 11-269.15. County rules; whole fruits or vegetables;  
5 exemptions; definitions

6 A. ANY RULE ADOPTED BY A DEPARTMENT RELATING TO THE PROCESSING,  
7 STORAGE, HANDLING, SERVICE OR TRANSPORTATION OF FOOD SHALL PROVIDE AN  
8 EXEMPTION RELATING TO A WHOLE FRUIT OR VEGETABLE THAT IS ANY OF THE  
9 FOLLOWING:

10 1. OFFERED AT A PUBLIC OR PRIVATE SCHOOL FACILITY OR A PUBLIC OR  
11 PRIVATE POSTSECONDARY EDUCATIONAL INSTITUTION AND THAT IS WASHED AND CUT  
12 ON-SITE FOR IMMEDIATE CONSUMPTION.

13 2. GROWN IN A HOME GARDEN, PUBLIC SCHOOL GARDEN, FOOD ESTABLISHMENT  
14 GARDEN OR COMMUNITY GARDEN.

15 3. OFFERED FOR COMMERCIAL OR NONCOMMERCIAL PURPOSES AT A FARMERS'  
16 MARKET.

17 B. UNTIL A DEPARTMENT ADOPTS EXEMPTIONS BY RULE AS REQUIRED BY  
18 SUBSECTION A OF THIS SECTION, WHOLE FRUIT AND VEGETABLES ARE EXEMPT FROM THE  
19 RULES RELATING TO THE PROCESSING, STORAGE, HANDLING, SERVICE OR  
20 TRANSPORTATION OF FOOD IF ANY CONDITION PRESCRIBED IN SUBSECTION A, PARAGRAPH  
21 1, 2 OR 3 IS MET.

22 C. FOR THE PURPOSES OF THIS SECTION, "DEPARTMENT" AND "RULE" HAVE THE  
23 SAME MEANINGS PRESCRIBED IN SECTION 11-251.18.

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

25 36-136. Powers and duties of director; compensation of  
26 personnel

27 A. The director shall:

28 1. Be the executive officer of the department of health services and  
29 the state registrar of vital statistics but shall not receive compensation  
30 for services as registrar.

31 2. Perform all duties necessary to carry out the functions and  
32 responsibilities of the department.

33 3. Prescribe the organization of the department. The director shall  
34 appoint or remove personnel as necessary for the efficient work of the  
35 department and shall prescribe the duties of all personnel. The director may  
36 abolish any office or position in the department that the director believes  
37 is unnecessary.

38 4. Administer and enforce the laws relating to health and sanitation  
39 and the rules of the department.

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

43 6. Exercise general supervision over all matters relating to  
44 sanitation and health throughout the state. When in the opinion of the  
45 director it is necessary or advisable, a sanitary survey of the whole or of

1 any part of the state shall be made. The director may enter, examine and  
2 survey any source and means of water supply, sewage disposal plant, sewerage  
3 system, prison, public or private place of detention, asylum, hospital,  
4 school, public building, private institution, factory, workshop, tenement,  
5 public washroom, public restroom, public toilet and toilet facility, public  
6 eating room and restaurant, dairy, milk plant or food manufacturing or  
7 processing plant, and any premises in which the director has reason to  
8 believe there exists a violation of any health law or rule of the state that  
9 the director has the duty to administer.

10 7. Prepare sanitary and public health rules.

11 8. Perform other duties prescribed by law.

12 B. If the director has reasonable cause to believe that there exists a  
13 violation of any health law or rule of the state, the director may inspect  
14 any person or property in transportation through the state, and any car,  
15 boat, train, trailer, airplane or other vehicle in which that person or  
16 property is transported, and may enforce detention or disinfection as  
17 reasonably necessary for the public health if there exists a violation of any  
18 health law or rule.

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

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

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

33 2. Monies appropriated or otherwise made available to the department  
34 for distribution to or division among counties or public health services  
35 districts for local health work may be allocated or reallocated in a manner  
36 designed to ~~assure~~ ENSURE the accomplishment of recognized local public  
37 health activities and delegated functions, powers and duties in accordance  
38 with applicable standards of performance. Whenever in the director's opinion  
39 there is cause, the director may terminate all or a part of any delegation  
40 and may reallocate all or a part of any funds that may have been conditioned  
41 on the further performance of the functions, powers or duties conferred.

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

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

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

7 H. The director, by rule, shall:

8 1. Define and prescribe reasonably necessary measures for detecting,  
9 reporting, preventing and controlling communicable and preventable diseases.  
10 The rules shall declare certain diseases reportable. The rules shall  
11 prescribe measures, including isolation or quarantine, **THAT ARE** reasonably  
12 required to prevent the occurrence of, or to seek early detection and  
13 alleviation of, disability, insofar as possible, from communicable or  
14 preventable diseases. The rules shall include reasonably necessary measures  
15 to control animal diseases transmittable to humans.

16 2. Define and prescribe reasonably necessary measures, in addition to  
17 those prescribed by law, regarding the preparation, embalming, cremation,  
18 interment, disinterment and transportation of dead human bodies and the  
19 conduct of funerals, relating to and restricted to communicable diseases and  
20 regarding the removal, transportation, cremation, interment or disinterment  
21 of any dead human body.

22 3. Define and prescribe reasonably necessary procedures **THAT ARE** not  
23 inconsistent with law in regard to the use and accessibility of vital  
24 records, delayed birth registration and the completion, change and amendment  
25 of vital records.

26 4. Except as relating to the beneficial use of wildlife meat by public  
27 institutions and charitable organizations pursuant to title 17, prescribe  
28 reasonably necessary measures to ~~assure~~ **ENSURE** that all food or drink,  
29 including meat and meat products and milk and milk products sold at the  
30 retail level, provided for human consumption is free from unwholesome,  
31 poisonous or other foreign substances and filth, insects or disease-causing  
32 organisms. The rules shall prescribe reasonably necessary measures governing  
33 the production, processing, labeling, storing, handling, serving and  
34 transportation of these products. The rules shall prescribe minimum  
35 standards for the sanitary facilities and conditions that shall be maintained  
36 in any warehouse, restaurant or other premises, except a meat packing plant,  
37 slaughterhouse, wholesale meat processing plant, dairy product manufacturing  
38 plant or trade product manufacturing plant. The rules shall prescribe  
39 minimum standards for any truck or other vehicle in which food or drink is  
40 produced, processed, stored, handled, served or transported. The rules shall  
41 provide for the inspection and licensing of premises and vehicles so used,  
42 and for abatement as public nuisances of any premises or vehicles that do not  
43 comply with the rules and minimum standards. The rules shall provide an  
44 exemption relating to food or drink that is:

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

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

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

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

10 (e) Offered at a child care facility, A PUBLIC OR PRIVATE SCHOOL  
11 FACILITY OR A PUBLIC OR PRIVATE POSTSECONDARY EDUCATIONAL INSTITUTION and  
12 limited to commercially prepackaged food that is not potentially hazardous  
13 and whole fruits and vegetables that are washed and cut on site for immediate  
14 consumption.

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

17 (g) Baked and confectionary goods that are not potentially hazardous  
18 and that are prepared in a kitchen of a private home for commercial purposes  
19 if packaged with a label that clearly states the address of the maker,  
20 includes contact information for the maker, lists all the ingredients in the  
21 product and discloses that the product was prepared in a home. The label  
22 must be given to the final consumer of the product. If the product was made  
23 in a facility for individuals with developmental disabilities, the label must  
24 also disclose that fact. The person preparing the food or supervising the  
25 food preparation must obtain a food handler's card or certificate if one is  
26 issued by the local county and must register with an online registry  
27 established by the department pursuant to paragraph 13 of this subsection.  
28 For the purposes of this subdivision, "potentially hazardous" means baked and  
29 confectionary goods that meet the requirements of the food code published by  
30 the United States food and drug administration, as modified and incorporated  
31 by reference by the department by rule.

32 (h) A WHOLE FRUIT OR VEGETABLE GROWN IN A HOME GARDEN, PUBLIC SCHOOL  
33 GARDEN, FOOD ESTABLISHMENT GARDEN OR COMMUNITY GARDEN.

34 (i) A WHOLE FRUIT OR VEGETABLE OFFERED FOR COMMERCIAL OR NONCOMMERCIAL  
35 PURPOSES AT A FARMERS' MARKET.

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

43 6. Prescribe reasonably necessary measures regarding production,  
44 processing, labeling, handling, serving and transportation of bottled water  
45 to ~~assure~~ ENSURE that all bottled drinking water distributed for human

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

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

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

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

42 10. Prescribe reasonably necessary measures to prevent pollution of  
43 water used in public or semipublic swimming pools and bathing places and to  
44 prevent deleterious health conditions at these places. The rules shall  
45 prescribe minimum standards for sanitary conditions that shall be maintained

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

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

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

17 13. Establish an online registry of food preparers that are authorized  
18 to prepare food for commercial purposes pursuant to paragraph 4 of this  
19 subsection.

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

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

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

39 L. After consultation with the state superintendent of public  
40 instruction, the director shall prescribe the criteria the department shall  
41 use in deciding whether or not to notify a local school district that a pupil  
42 in the district has tested positive for the human immunodeficiency virus  
43 antibody. The director shall prescribe the procedure by which the department  
44 shall notify a school district if, pursuant to these criteria, the department  
45 determines that notification is warranted in a particular situation. This

1 procedure shall include a requirement that before notification the department  
2 shall determine to its satisfaction that the district has an appropriate  
3 policy relating to nondiscrimination of the infected pupil and  
4 confidentiality of test results and that proper educational counseling has  
5 been or will be provided to staff and pupils.

6 M. Until the department adopts exemptions by rule as required by  
7 subsection H, paragraph 4, subdivision (f) of this section, food and drink ~~is~~  
8 ARE exempt from the rules prescribed in subsection H of this section if  
9 offered at locations that sell only commercially prepackaged food or drink  
10 that is not potentially hazardous, without a limitation on its display area.