

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 243
HOUSE BILL 2518

AN ACT

AMENDING SECTION 36-136, ARIZONA REVISED STATUTES; RELATING TO SCHOOL GARDEN
PRODUCE REGULATORY EXEMPTION.

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

26 (a) Served at a noncommercial social event 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 and prepared in a kitchen of a private
31 home for occasional sale or distribution for noncommercial purposes.

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

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

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

40 (g) Baked and confectionary goods that are not potentially hazardous
41 and that are prepared in a kitchen of a private home for commercial purposes
42 if packaged with a label that clearly states the address of the maker,
43 includes contact information for the maker, lists all the ingredients in the
44 product and discloses that the product was prepared in a home. The label
45 must be given to the final consumer of the product. If the product was made
46 in a facility for individuals with developmental disabilities, the label must

1 also disclose that fact. The person preparing the food or supervising the
2 food preparation must obtain a food handler's card or certificate if one is
3 issued by the local county and must register with an online registry
4 established by the department pursuant to paragraph 13 of this subsection.
5 For the purposes of this subdivision, "potentially hazardous" means baked and
6 confectionary goods that meet the requirements of the food code published by
7 the United States food and drug administration, as modified and incorporated
8 by reference by the department by rule.

9 (h) A WHOLE FRUIT OR VEGETABLE GROWN IN A PUBLIC SCHOOL GARDEN THAT IS
10 WASHED AND CUT ON-SITE FOR IMMEDIATE CONSUMPTION.

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

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

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

44 8. Define and prescribe reasonably necessary measures concerning
45 sewage and excreta disposal, garbage and trash collection, storage and
46 disposal, and water supply for recreational and summer camps, campgrounds,

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

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

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

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

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

35 13. Establish an online registry of food preparers that are authorized
36 to prepare food for commercial purposes pursuant to paragraph 4 of this
37 subsection.

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

45 J. The powers and duties prescribed by this section do not apply in
46 instances in which regulatory powers and duties relating to public health are

1 vested by the legislature in any other state board, commission, agency or
2 instrumentality, except that with regard to the regulation of meat and meat
3 products, the department of health services and the Arizona department of
4 agriculture within the area delegated to each shall adopt rules that are not
5 in conflict.

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

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

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

28 N. UNTIL THE DEPARTMENT ADOPTS EXEMPTIONS BY RULE AS REQUIRED BY
29 SUBSECTION H, PARAGRAPH 4, SUBDIVISION (h) OF THIS SECTION, A WHOLE FRUIT OR
30 VEGETABLE GROWN IN A PUBLIC SCHOOL GARDEN THAT IS WASHED AND CUT ON-SITE FOR
31 IMMEDIATE CONSUMPTION IS EXEMPT FROM THE RULES PRESCRIBED IN SUBSECTION H OF
32 THIS SECTION.

APPROVED BY THE GOVERNOR MAY 12, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2016.