

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

# HOUSE BILL 2103

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.

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

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

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

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

32 H. The director, by rule, shall:

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

41 2. Define and prescribe reasonably necessary measures, in addition to  
42 those prescribed by law, regarding the preparation, embalming, cremation,  
43 interment, disinterment and transportation of dead human bodies and the  
44 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 ~~and~~ 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 ~~and~~ OR drink that is not potentially hazardous and that is displayed in an  
40 area of less than ten ~~linea~~ LINEAR feet.

41 (g) BAKED AND CONFECTIONARY GOODS THAT ARE NOT POTENTIALLY HAZARDOUS  
42 AND THAT ARE PREPARED IN A KITCHEN OF A PRIVATE HOME FOR COMMERCIAL PURPOSES  
43 IF PACKAGED WITH A LABEL THAT CLEARLY STATES THE ADDRESS OF THE MAKER,  
44 INCLUDES CONTACT INFORMATION FOR THE MAKER, LISTS ALL THE INGREDIENTS IN THE  
45 PRODUCT AND DISCLOSES THAT THE PRODUCT WAS PREPARED IN A HOME. THE LABEL

1 MUST BE GIVEN TO THE FINAL CONSUMER OF THE PRODUCT. IF THE PRODUCT WAS MADE  
2 IN A FACILITY FOR DEVELOPMENTALLY DISABLED INDIVIDUALS, THE LABEL MUST ALSO  
3 DISCLOSE THAT FACT. THE PERSON PREPARING THE FOOD OR SUPERVISING THE FOOD  
4 PREPARATION MUST OBTAIN A FOOD HANDLER'S CARD OR CERTIFICATE IF ONE IS ISSUED  
5 BY THE LOCAL COUNTY AND MUST REGISTER WITH AN ONLINE REGISTRY ESTABLISHED BY  
6 THE DEPARTMENT PURSUANT TO PARAGRAPH 13 OF THIS SUBSECTION. FOR THE PURPOSES  
7 OF THIS SUBDIVISION, "POTENTIALLY HAZARDOUS" MEANS BAKED AND CONFECTIONARY  
8 GOODS THAT MEET THE REQUIREMENTS OF THE FOOD CODE PUBLISHED BY THE UNITED  
9 STATES FOOD AND DRUG ADMINISTRATION, AS MODIFIED AND INCORPORATED BY  
10 REFERENCE BY THE DEPARTMENT BY RULE.

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

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

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

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

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

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

36 13. ESTABLISH AN ONLINE REGISTRY OF FOOD PREPARERS THAT ARE AUTHORIZED  
37 TO PREPARE FOOD FOR COMMERCIAL PURPOSES PURSUANT TO PARAGRAPH 4 OF THIS  
38 SUBSECTION.

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

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

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

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

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

- 30 1. Only one cooking school meal per day is prepared and served.
- 31 2. The meal is served to not more than fifteen cooking school  
32 students.
- 33 3. The students are informed by a statement contained in a published  
34 advertisement, mailed brochure and placard posted at the cooking school's  
35 registration that the food is prepared in a kitchen that is not regulated and  
36 inspected by the department or by a local health authority.