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

HB 2341

Introduced by
Representatives Townsend, Coleman: Bowers, Campbell, Cobb, Fann, Finchem, Petersen, Thorpe

AN ACT

AMENDING SECTION 36-136, ARIZONA REVISED STATUTES; RELATING TO THE REGULATION OF FOOD.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-136, Arizona Revised Statutes, is amended to read:

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

A. The director shall:

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

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

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

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

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

6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
C. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

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

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

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

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

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

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

H. The director, by rule, shall:

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

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

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

4. Except as relating to the beneficial use of wildlife meat by public
institutions and charitable organizations pursuant to title 17, prescribe
reasonably necessary measures to assure ENSURE that all food or drink,
including meat and meat products and milk and milk products sold at the
retail level, provided for human consumption is free from unwholesome,
poisonous or other foreign substances and filth, insects or disease-causing
organisms. The rules shall prescribe reasonably necessary measures governing
the production, processing, labeling, storing, handling, serving and
transportation of these products. The rules shall prescribe minimum
standards for the sanitary facilities and conditions that shall be maintained
in any warehouse, restaurant or other premises, except a meat packing plant,
slaughterhouse, wholesale meat processing plant, dairy product manufacturing
plant or trade product manufacturing plant. The rules shall prescribe
minimum standards for any truck or other vehicle in which food or drink is
produced, processed, stored, handled, served or transported. The rules shall
provide for the inspection and licensing of premises and vehicles so used,
and for abatement as public nuisances of any premises or vehicles that do not
comply with the rules and minimum standards. The rules shall provide an
exemption relating to food or drink that is:
(a) Served at a noncommercial social event that takes place at a
workplace, such as a potluck.
(b) Prepared at a cooking school that is conducted in an
owner-occupied home.
(c) Not potentially hazardous and prepared in a kitchen of a private
home for occasional sale or distribution for noncommercial purposes.
(d) Prepared or served at an employee-conducted function that lasts
less than four hours and is not regularly scheduled, such as an employee
recognition, an employee fund-raising or an employee social event.
(e) Offered at a child care facility and limited to commercially
prepackaged food that is not potentially hazardous and whole fruits and
vegetables that are washed and cut on site for immediate consumption.
(f) Offered at locations that sell only commercially prepackaged food
or drink that is not potentially hazardous.
(g) Baked and confectionary goods that are not potentially hazardous
and that are prepared in a kitchen of a private home for commercial purposes
if packaged with a label that clearly states the address of the maker,
includes contact information for the maker, lists all the ingredients in the
product and discloses that the product was prepared in a home. The label
must be given to the final consumer of the product. If the product was made
in a facility for individuals with developmental disabilities, the label must
also disclose that fact. The person preparing the food or supervising the
food preparation must obtain a food handler’s card or certificate if one is
issued by the local county and must register with an online registry
established by the department pursuant to paragraph 13 of this subsection.
For the purposes of this subdivision, "potentially hazardous" means baked and
confectionary goods that meet the requirements of the food code published by
the United States food and drug administration, as modified and incorporated
by reference by the department by rule.

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

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

7. Define and prescribe reasonably necessary measures governing ice
production, handling, storing and distribution to assure ENSURE that all ice
sold or distributed for human consumption or for the preservation or storage
of food for human consumption is free from unwholesome, poisonous,
deleterious or other foreign substances and filth or disease-causing
organisms. The rules shall prescribe minimum standards for the sanitary
facilities and conditions and the quality of ice that shall be maintained at
any ice plant, storage and truck or vehicle in which ice is produced, stored,
handled or transported and shall provide for inspection and licensing of the
premises and vehicles, and for abatement as public nuisances of ice,
premises, equipment, processes or vehicles that do not comply with the
minimum standards.
8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.

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

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

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

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

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

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

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

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

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

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