HB 2371

Introduced by
Representatives Payne: Campbell, Clodfelter, Cook, John, Mosley, Thorpe, Toma

AN ACT

AMENDING TITLE 9, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7.2; AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-269.20; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 15; AMENDING TITLE 41, CHAPTER 3.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-626; AMENDING SECTION 42-5074, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-6015; RELATING TO BUSINESS REGULATIONS.

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

Section 1. Title 9, chapter 4, Arizona Revised Statutes, is amended by adding article 7.2, to read:

ARTICLE 7.2. MOBILE FOOD VENDORS

9-485. Definition of mobile food vendor

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES, "MOBILE FOOD VENDOR" MEANS A FOOD ESTABLISHMENT THAT IS READILY MOVABLE AND THAT DISPENSES FOOD OR BEVERAGES FOR IMMEDIATE SERVICE AND CONSUMPTION FROM ANY VEHICLE.

9-485.01. Mobile food vendors; operation

A. IN RELATION TO A MOBILE FOOD VENDOR, A CITY OR TOWN BY ORDINANCE MAY:

1. IMPOSE OPERATING HOURS ONLY IF THEY ARE THE SAME AS THE OPERATING HOURS IMPOSED ON RESTAURANTS IN THAT CITY OR TOWN.

2. RESTRICT THE OPERATION OF NOISEMAKING DEVICES DURING SPECIFIC TIMES OF DAY.

3. RESTRICT OR PROHIBIT THE OPERATION OF A MOBILE FOOD VENDOR IN AN AREA THAT IS ZONED AS RESIDENTIAL ONLY.

4. PROHIBIT A MOBILE FOOD VENDOR THAT IS OPERATING ON PRIVATE PROPERTY FROM BLOCKING INGRESS TO AND EGRESS FROM THAT PROPERTY.

5. PROHIBIT A MOBILE FOOD VENDOR FROM BLOCKING OR INHIBITING THE USE OF A PUBLIC SIDEWALK BY PEDESTRIANS.

B. IN RELATION TO A MOBILE FOOD VENDOR, A CITY OR TOWN MAY NOT:

1. RESTRICT HOW LONG A MOBILE FOOD VENDOR MAY OPERATE AT A PRIVATE PROPERTY LOCATION.

2. REQUIRE A MOBILE FOOD VENDOR, PROPERTY OWNER OR LESSEE OF A PROPERTY TO APPLY FOR AND RECEIVE ANY SPECIAL PERMIT OR PERMISSION FROM THE CITY OR TOWN BEFORE THE MOBILE FOOD VENDOR BEGINS OPERATION.

3. PROHIBIT OR RESTRICT A MOBILE FOOD VENDOR FROM OPERATING ON PUBLIC PROPERTY.

4. REQUIRE A MOBILE FOOD VENDOR TO OPERATE A SPECIFIC DISTANCE FROM THE PERIMETER OF AN EXISTING COMMERCIAL ESTABLISHMENT OR RESTAURANT.

5. PROHIBIT OR RESTRICT A MOBILE FOOD VENDOR FROM USING ANY LEGAL PARKING SPACE, INCLUDING METERED PARKING, TO THE SAME EXTENT AS ANY OTHER COMMERCIAL VEHICLE.

6. REQUIRE A MOBILE FOOD VENDOR TO BE FINGERPRINTED.

C. A CITY OR TOWN BUSINESS LICENSE APPLICATION SHALL BE AVAILABLE ONLINE. A CITY OR TOWN MAY NOT REQUIRE A MOBILE FOOD VENDOR TO APPLY IN PERSON.

9-485.02. Insurance requirement prohibited

A CITY OR TOWN MAY NOT REQUIRE A MOBILE FOOD VENDOR TO MAINTAIN AN INSURANCE POLICY THAT NAMES THE CITY OR TOWN AS AN ADDITIONAL INSURED UNLESS THE MOBILE FOOD VENDOR IS ATTENDING AN EVENT SPONSORED BY THAT CITY OR TOWN.
Sec. 2. Title 11, chapter 2, article 4, Arizona Revised Statutes, is amended by adding section 11-269.20, to read:

11-269.20. Mobile food vendors; operation; insurance requirement prohibited; definition

A. In relation to a mobile food vendor, a county board of supervisors by ordinance may:

1. Impose operating hours only if they are the same as the operating hours imposed on restaurants in that county.

2. Restrict the operation of noisemaking devices during specific times of day.

3. Restrict or prohibit the operation of a mobile food vendor in an area that is zoned as residential only.

4. Prohibit a mobile food vendor that is operating on private property from blocking ingress to and egress from that property.

B. In relation to a mobile food vendor, a county board of supervisors may not:

1. Restrict how long a mobile food vendor may operate at a private property location.

2. Require a mobile food vendor, property owner or lessee of a property to apply for and receive any special permit or permission from the county before the mobile food vendor begins operation.

3. Prohibit or restrict a mobile food vendor from operating on public property.

4. Require a mobile food vendor to operate a specific distance from the perimeter of an existing commercial establishment or restaurant.

5. Prohibit or restrict a mobile food vendor from using any legal parking space, including metered parking, to the same extent as any other commercial vehicle.

6. Require a mobile food vendor to maintain an insurance policy that names the county as an additional insured unless the mobile food vendor is attending an event sponsored by that county.

7. Require a mobile food vendor to be fingerprinted.

C. A county business license application shall be available online. The county may not require a mobile food vendor to apply in person.

D. For the purposes of this section, "mobile food vendor" means a food establishment that is readily movable and that dispenses food or beverages for immediate service and consumption from any vehicle.
Sec. 3. Title 36, Arizona Revised Statutes, is amended by adding chapter 15, to read:

CHAPTER 15
MOBILE FOOD VENDORS

ARTICLE 1. GENERAL PROVISIONS

36-1751. Definitions
IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.
2. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES.
3. "MOBILE FOOD VENDOR" MEANS A FOOD ESTABLISHMENT THAT IS READILY MOVABLE AND THAT DISPENSES FOOD OR BEVERAGES FOR IMMEDIATE SERVICE AND CONSUMPTION FROM ANY VEHICLE.

ARTICLE 2. LICENSURE AND REGULATION

36-1761. Mobile food vendors; rules; health and safety licensing standards
A. THE DIRECTOR SHALL ADOPT RULES THAT DO ALL OF THE FOLLOWING:
1. ESTABLISH HEALTH AND SAFETY LICENSING STANDARDS FOR MOBILE FOOD VENDORS THAT APPLY ON A STATEWIDE BASIS. THE LICENSING STANDARDS SHALL:
   (a) INCLUDE THREE CATEGORIES OF MOBILE FOOD VENDORS THAT ARE BASED ON THE TYPE OF FOOD DISPENSED AND THE AMOUNT OF HANDLING AND PREPARATION REQUIRED.
   (b) REQUIRE FIRE EXTINGUISHERS FOR MOBILE FOOD VENDORS THAT SELL OR DISTRIBUTE TIME AND TEMPERATURE CONTROL FOR SAFETY FOOD OR BEVERAGES.
   (c) INCLUDE GENERAL PHYSICAL AND OPERATION REQUIREMENTS OF A MOBILE FOOD VENDOR, INCLUDING:
      (i) INSTALLATION OF COMPRESSORS, GENERATORS AND SIMILAR MECHANICAL UNITS THAT ARE NOT AN INTEGRAL PART OF THE FOOD PREPARATION OR STORAGE EQUIPMENT.
      (ii) NECESSARY COMMISSARY OR OTHER SERVICING AREA AGREEMENTS.
      (iii) VEHICLE AND EQUIPMENT CLEANING.
      (iv) WASTE DISPOSAL DURING AND AFTER OPERATION ON PUBLIC OR PRIVATE PROPERTY, WHICH MAY NOT INCLUDE THE SIZE OR DIMENSIONS OF ANY REQUIRED WASTE RECEPTACLE.
2. ESTABLISH STATEWIDE INSPECTION STANDARDS THAT ARE BASED ON OBJECTIVE FACTORS FOR USE BY THE COUNTY HEALTH DEPARTMENTS.
3. ESTABLISH A LICENSING PROCESS FOR MOBILE FOOD VENDORS THAT DOES ALL OF THE FOLLOWING:
   (a) REQUIRES A SEPARATE LICENSE FOR EACH MOBILE FOOD VENDOR.
   (b) REQUIRES A LICENSE TO BE RENEWED ANNUALLY.
   (c) DELEGATES TO THE COUNTY HEALTH DEPARTMENT IN THE COUNTY WHERE THE MOBILE FOOD VENDOR OWNER'S COMMISSARY IS LOCATED THE LICENSING AND HEALTH AND SAFETY INSPECTION FOR STATE LICENSURE USING THE STATEWIDE INSPECTION STANDARDS ADOPTED PURSUANT TO THIS SECTION. THE LICENSING PROCESS SHALL REQUIRE RANDOM INSPECTIONS BY COUNTY HEALTH DEPARTMENTS AT
NO ADDITIONAL COST. A MOBILE FOOD VENDOR LICENSE ISSUED BY A COUNTY HEALTH DEPARTMENT PURSUANT TO THIS SECTION SHALL HAVE RECIPROCITY IN EACH COUNTY OF THIS STATE. A COUNTY HEALTH DEPARTMENT MAY ENFORCE THE STATEWIDE INSPECTION STANDARDS REGARDLESS OF WHERE THE LICENSE WAS ISSUED.

(d) Requires all employees of a mobile food vendor to have a valid food handler card or a certificate from an accredited food handler training class as specified in rule by the department.

(e) Requires that the license be displayed in the mobile food vendor's operating location in a conspicuous location for public view.

4. Require a mobile food vendor to receive consent from a private property owner or lessee or that property owner's or lessee's agent before beginning operation on that property.

5. Prohibit a mobile food vendor from operating in a manner that requires or allows potential customers to enter the street in order to engage in business with the mobile food vendor or to enter the vehicle.

B. The rules adopted pursuant to this section may not do either of the following:

1. Require a mobile food vendor to operate a specific distance from the perimeter of an existing commercial establishment or restaurant.

2. Address the operating hours of a mobile food vendor.

C. Except as otherwise specified in this chapter, the director may adopt rules that are substantively the same as the regulations that are in place on the effective date of this section in Maricopa County regarding mobile food establishments.

Sec. 4. Title 41, chapter 3.1, article 1, Arizona Revised Statutes, is amended by adding section 41-626, to read:

41-626. Mobile food vendors; insurance requirement prohibited; definition

A. This state or any department or agency of this state may not require a mobile food vendor to maintain an insurance policy that names this state as an additional insured unless the mobile food vendor is attending an event sponsored by this state.

B. For the purposes of this section, "mobile food vendor" means a food establishment that is readily movable and that dispenses food or beverages for immediate service and consumption from any vehicle.

Sec. 5. Section 42-5074, Arizona Revised Statutes, is amended to read:

42-5074. Restaurant classification

A. The restaurant classification is comprised of the business of operating restaurants, dining cars, dining rooms, lunchrooms, mobile food vendors, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises.

B. The tax base for the restaurant classification is the gross proceeds of sales or gross income derived from the business. The gross
proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales to a person engaged in business classified under the restaurant classification if the items sold are to be resold in the regular course of the business.

2. Sales by a congressionally chartered veterans organization of food or drink prepared for consumption on the premises leased, owned or maintained by the organization.

3. Sales by churches, fraternal benefit societies and other nonprofit organizations, as these organizations are defined in the federal internal revenue code (26 United States Code section 501), that do not regularly engage or continue in the restaurant business for the purpose of fund-raising.

4. Sales by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization’s net earnings inures to the benefit of any private shareholder or individual.

5. Sales at a rodeo featuring primarily farm and ranch animals in this state by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and IF no part of the organization’s net earnings inures to the benefit of any private shareholder or individual.

6. Sales by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

7. Sales to qualifying hospitals as defined in section 42-5001.

8. Sales to a qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

9. Sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

10. Sales of articles of prepared or unprepared food, drink or condiment and accessory tangible personal property to a school district or charter school if the articles and accessory tangible personal property are served to persons for consumption on the premises of a public school in the school district or charter school during school hours.

11. Prepared food, drink or condiment donated by a restaurant to a nonprofit charitable organization that has qualified under section
501(c)(3) of the internal revenue code and that regularly serves meals to
the needy and indigent on a continuing basis at no cost.

12. Sales of articles of food and drink at low or reduced prices to
eligible elderly, disabled or homeless persons OR PERSONS WITH A
DISABILITY by a restaurant that contracts with the department of economic
security and that is approved by the food and nutrition services of the
United States department of agriculture pursuant to the supplemental
nutrition assistance program established by the food and nutrition act of
through 2036a), if the purchases of the articles of food and drink are
made with the benefits issued pursuant to the supplemental nutrition
assistance program.

C. The tax imposed on the restaurant classification pursuant to
this section does not apply to the gross proceeds of sales or gross income
from tangible personal property sold to a commercial airline consisting of
food, beverages and condiments and accessories used for serving the food
and beverages, if those items are to be provided without additional charge
to passengers for consumption in flight. For the purposes of this
subsection, “commercial airline” means a person holding a federal
certificate of public convenience and necessity or foreign air carrier
permit for air transportation to transport persons, property or United
States mail in intrastate, interstate or foreign commerce.

D. The department shall separately account for revenues collected
under the restaurant classification for the purposes of section 42-5029,
subsection D, paragraph 4, subdivision (b).

E. For THE purposes of section 42-5032.01, the department shall
separately account for revenues collected under the restaurant
classification from businesses operating restaurants, dining rooms,
lunchrooms, lunch stands, soda fountains, catering services or similar
establishments:

1. On the premises of a multipurpose facility that is owned or
operated by the tourism and sports authority pursuant to title 5, chapter
8 for consumption on or off the premises.

2. At professional football contests that are held in a stadium
located on the campus of an institution under the jurisdiction of the
Arizona board of regents.

Sec. 6. Title 42, chapter 6, article 1, Arizona Revised Statutes,
is amended by adding section 42-6015, to read:

42-6015. Mobile food vendors; definition

A. A CITY, TOWN OR OTHER TAXING JURISDICTION MAY LEVY A TRANSACTION
PRIVILEGE, SALES, USE, FRANCHISE OR OTHER SIMILAR TAX OR FEE AS PROVIDED
BY THE MODEL CITY TAX CODE ON A PERSON ENGAGING IN BUSINESS AS A MOBILE
FOOD VENDOR THAT IS LICENSED UNDER THE RESTAURANT CLASSIFICATION PURSUANT
TO SECTION 42-5074 IF THE ADOPTED TAX:
1. APPLIES ONLY WITH RESPECT TO TRANSACTIONS THAT OCCUR WITHIN THE
JURISDICTIONAL BOUNDARIES OF THE CITY, TOWN OR TAXING JURISDICTION.

2. IS ADMINISTERED IN A MANNER THAT IS CONSISTENT WITH THE
TREATMENT OF RESTAURANTS OR SIMILAR ESTABLISHMENTS WHERE FOOD OR BEVERAGES
ARE PREPARED AND SERVED FOR CONSUMPTION ON OR OFF THE PREMISES.

3. IS ADMINISTERED, COLLECTED AND ENFORCED BY THE DEPARTMENT AND
REMITTED TO THE CITY, TOWN OR OTHER TAXING JURISDICTION IN A UNIFORM
MANNER.

B. THE TAXPAYER SHALL MAINTAIN RECORDS THAT SHOW SEPARATELY THE
TAXABLE RECEIPTS FROM TRANSACTIONS IN THE RESPECTIVE CITIES, TOWNS OR
OTHER TAXING JURISDICTIONS IN WHICH THE TAXPAYER CONDUCTS BUSINESS. IF
THE TAXPAYER FAILS TO COMPLY WITH THIS SUBSECTION, THE DEPARTMENT SHALL
COLLECT THE TAX BASED ON THE TAXPAYER'S TOTAL RECEIPTS, APPLYING THE
HIGHEST TAX RATE LEVIED BY ANY CITY, TOWN OR OTHER TAXING JURISDICTION.

C. FOR THE PURPOSES OF THIS SECTION, "MOBILE FOOD VENDOR" MEANS A
FOOD ESTABLISHMENT THAT IS READILY MOVABLE AND THAT DISPENSES FOOD OR
BEVERAGES FOR IMMEDIATE SERVICE AND CONSUMPTION FROM ANY VEHICLE.

Sec. 7. Rulemaking; exemption

For the purposes of title 36, chapter 15, Arizona Revised Statutes,
as added by this act, the department of health services is exempt from the
rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes,
for one year after the effective date of this act.