

REFERENCE TITLE: **mobile food vendors; state licensure**

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

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)

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

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

4 ARTICLE 7.2. MOBILE FOOD VENDORS

5 9-485. Definition of mobile food vendor

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

10 9-485.01. Mobile food vendors: operation

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

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

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

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

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

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

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

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

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

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

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

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

36 6. REQUIRE A MOBILE FOOD VENDOR TO BE FINGERPRINTED.

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

40 9-485.02. Insurance requirement prohibited

41 A CITY OR TOWN MAY NOT REQUIRE A MOBILE FOOD VENDOR TO MAINTAIN AN
42 INSURANCE POLICY THAT NAMES THE CITY OR TOWN AS AN ADDITIONAL INSURED
43 UNLESS THE MOBILE FOOD VENDOR IS ATTENDING AN EVENT SPONSORED BY THAT CITY
44 OR TOWN.

1 Sec. 2. Title 11, chapter 2, article 4, Arizona Revised Statutes,
2 is amended by adding section 11-269.20, to read:

3 11-269.20. Mobile food vendors; operation; insurance
4 requirement prohibited; definition

5 A. IN RELATION TO A MOBILE FOOD VENDOR, A COUNTY BOARD OF
6 SUPERVISORS BY ORDINANCE MAY:

7 1. IMPOSE OPERATING HOURS ONLY IF THEY ARE THE SAME AS THE
8 OPERATING HOURS IMPOSED ON RESTAURANTS IN THAT COUNTY.

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

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

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

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

17 B. IN RELATION TO A MOBILE FOOD VENDOR, A COUNTY BOARD OF
18 SUPERVISORS MAY NOT:

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

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

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

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

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

31 6. REQUIRE A MOBILE FOOD VENDOR TO MAINTAIN AN INSURANCE POLICY
32 THAT NAMES THE COUNTY AS AN ADDITIONAL INSURED UNLESS THE MOBILE FOOD
33 VENDOR IS ATTENDING AN EVENT SPONSORED BY THAT COUNTY.

34 7. REQUIRE A MOBILE FOOD VENDOR TO BE FINGERPRINTED.

35 C. A COUNTY BUSINESS LICENSE APPLICATION SHALL BE AVAILABLE ONLINE.
36 THE COUNTY MAY NOT REQUIRE A MOBILE FOOD VENDOR TO APPLY IN PERSON.

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

1 Sec. 3. Title 36, Arizona Revised Statutes, is amended by adding
2 chapter 15, to read:

3 CHAPTER 15
4 MOBILE FOOD VENDORS
5 ARTICLE 1. GENERAL PROVISIONS

6 36-1751. Definitions

7 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

8 1. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.

9 2. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF HEALTH
10 SERVICES.

11 3. "MOBILE FOOD VENDOR" MEANS A FOOD ESTABLISHMENT THAT IS READILY
12 MOVABLE AND THAT DISPENSES FOOD OR BEVERAGES FOR IMMEDIATE SERVICE AND
13 CONSUMPTION FROM ANY VEHICLE.

14 ARTICLE 2. LICENSURE AND REGULATION

15 36-1761. Mobile food vendors; rules; health and safety
16 licensing standards

17 A. THE DIRECTOR SHALL ADOPT RULES THAT DO ALL OF THE FOLLOWING:

18 1. ESTABLISH HEALTH AND SAFETY LICENSING STANDARDS FOR MOBILE FOOD
19 VENDORS THAT APPLY ON A STATEWIDE BASIS. THE LICENSING STANDARDS SHALL:

20 (a) INCLUDE THREE CATEGORIES OF MOBILE FOOD VENDORS THAT ARE BASED
21 ON THE TYPE OF FOOD DISPENSED AND THE AMOUNT OF HANDLING AND PREPARATION
22 REQUIRED.

23 (b) REQUIRE FIRE EXTINGUISHERS FOR MOBILE FOOD VENDORS THAT SELL OR
24 DISTRIBUTE TIME AND TEMPERATURE CONTROL FOR SAFETY FOOD OR BEVERAGES.

25 (c) INCLUDE GENERAL PHYSICAL AND OPERATION REQUIREMENTS OF A MOBILE
26 FOOD VENDOR, INCLUDING:

27 (i) INSTALLATION OF COMPRESSORS, GENERATORS AND SIMILAR MECHANICAL
28 UNITS THAT ARE NOT AN INTEGRAL PART OF THE FOOD PREPARATION OR STORAGE
29 EQUIPMENT.

30 (ii) NECESSARY COMMISSARY OR OTHER SERVICING AREA AGREEMENTS.

31 (iii) VEHICLE AND EQUIPMENT CLEANING.

32 (iv) WASTE DISPOSAL DURING AND AFTER OPERATION ON PUBLIC OR PRIVATE
33 PROPERTY, WHICH MAY NOT INCLUDE THE SIZE OR DIMENSIONS OF ANY REQUIRED
34 WASTE RECEPTACLE.

35 2. ESTABLISH STATEWIDE INSPECTION STANDARDS THAT ARE BASED ON
36 OBJECTIVE FACTORS FOR USE BY THE COUNTY HEALTH DEPARTMENTS.

37 3. ESTABLISH A LICENSING PROCESS FOR MOBILE FOOD VENDORS THAT DOES
38 ALL OF THE FOLLOWING:

39 (a) REQUIRES A SEPARATE LICENSE FOR EACH MOBILE FOOD VENDOR.

40 (b) REQUIRES A LICENSE TO BE RENEWED ANNUALLY.

41 (c) DELEGATES TO THE COUNTY HEALTH DEPARTMENT IN THE COUNTY WHERE
42 THE MOBILE FOOD VENDOR OWNER'S COMMISSARY IS LOCATED THE LICENSING AND
43 HEALTH AND SAFETY INSPECTION FOR STATE LICENSURE USING THE STATEWIDE
44 INSPECTION STANDARDS ADOPTED PURSUANT TO THIS SECTION. THE LICENSING
45 PROCESS SHALL REQUIRE RANDOM INSPECTIONS BY COUNTY HEALTH DEPARTMENTS AT

1 NO ADDITIONAL COST. A MOBILE FOOD VENDOR LICENSE ISSUED BY A COUNTY
2 HEALTH DEPARTMENT PURSUANT TO THIS SECTION SHALL HAVE RECIPROCITY IN EACH
3 COUNTY OF THIS STATE. A COUNTY HEALTH DEPARTMENT MAY ENFORCE THE
4 STATEWIDE INSPECTION STANDARDS REGARDLESS OF WHERE THE LICENSE WAS ISSUED.

5 (d) REQUIRES ALL EMPLOYEES OF A MOBILE FOOD VENDOR TO HAVE A VALID
6 FOOD HANDLER CARD OR A CERTIFICATE FROM AN ACCREDITED FOOD HANDLER
7 TRAINING CLASS AS SPECIFIED IN RULE BY THE DEPARTMENT.

8 (e) REQUIRES THAT THE LICENSE BE DISPLAYED IN THE MOBILE FOOD
9 VENDOR'S OPERATING LOCATION IN A CONSPICUOUS LOCATION FOR PUBLIC VIEW.

10 4. REQUIRE A MOBILE FOOD VENDOR TO RECEIVE CONSENT FROM A PRIVATE
11 PROPERTY OWNER OR LESSEE OR THAT PROPERTY OWNER'S OR LESSEE'S AGENT BEFORE
12 BEGINNING OPERATION ON THAT PROPERTY.

13 5. PROHIBIT A MOBILE FOOD VENDOR FROM OPERATING IN A MANNER THAT
14 REQUIRES OR ALLOWS POTENTIAL CUSTOMERS TO ENTER THE STREET IN ORDER TO
15 ENGAGE IN BUSINESS WITH THE MOBILE FOOD VENDOR OR TO ENTER THE VEHICLE.

16 B. THE RULES ADOPTED PURSUANT TO THIS SECTION MAY NOT DO EITHER OF
17 THE FOLLOWING:

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

20 2. ADDRESS THE OPERATING HOURS OF A MOBILE FOOD VENDOR.

21 C. EXCEPT AS OTHERWISE SPECIFIED IN THIS CHAPTER, THE DIRECTOR MAY
22 ADOPT RULES THAT ARE SUBSTANTIVELY THE SAME AS THE REGULATIONS THAT ARE IN
23 PLACE ON THE EFFECTIVE DATE OF THIS SECTION IN MARICOPA COUNTY REGARDING
24 MOBILE FOOD ESTABLISHMENTS.

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

27 41-626. Mobile food vendors; insurance requirement
28 prohibited; definition

29 A. THIS STATE OR ANY DEPARTMENT OR AGENCY OF THIS STATE MAY NOT
30 REQUIRE A MOBILE FOOD VENDOR TO MAINTAIN AN INSURANCE POLICY THAT NAMES
31 THIS STATE AS AN ADDITIONAL INSURED UNLESS THE MOBILE FOOD VENDOR IS
32 ATTENDING AN EVENT SPONSORED BY THIS STATE.

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

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

38 42-5074. Restaurant classification

39 A. The restaurant classification is comprised of the business of
40 operating restaurants, dining cars, dining rooms, lunchrooms, MOBILE FOOD
41 VENDORS, lunch stands, soda fountains, catering services or similar
42 establishments where articles of food or drink are sold for consumption on
43 or off the premises.

44 B. The tax base for the restaurant classification is the gross
45 proceeds of sales or gross income derived from the business. The gross

1 proceeds of sales or gross income derived from the following shall be
2 deducted from the tax base:

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

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

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

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

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

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

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

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

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

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

43 11. Prepared food, drink or condiment donated by a restaurant to a
44 nonprofit charitable organization that has qualified under section

1 501(c)(3) of the internal revenue code and that regularly serves meals to
2 the needy and indigent on a continuing basis at no cost.

3 12. Sales of articles of food and drink at low or reduced prices to
4 eligible elderly, ~~disabled~~ or homeless persons **OR PERSONS WITH A**
5 **DISABILITY** by a restaurant that contracts with the department of economic
6 security and that is approved by the food and nutrition services of the
7 United States department of agriculture pursuant to the supplemental
8 nutrition assistance program established by the food and nutrition act of
9 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011
10 through 2036a), if the purchases of the articles of food and drink are
11 made with the benefits issued pursuant to the supplemental nutrition
12 assistance program.

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

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

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

31 1. On the premises of a multipurpose facility that is owned or
32 operated by the tourism and sports authority pursuant to title 5, chapter
33 8 for consumption on or off the premises.

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

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

39 **42-6015. Mobile food vendors; definition**

40 **A. A CITY, TOWN OR OTHER TAXING JURISDICTION MAY LEVY A TRANSACTION**
41 **PRIVILEGE, SALES, USE, FRANCHISE OR OTHER SIMILAR TAX OR FEE AS PROVIDED**
42 **BY THE MODEL CITY TAX CODE ON A PERSON ENGAGING IN BUSINESS AS A MOBILE**
43 **FOOD VENDOR THAT IS LICENSED UNDER THE RESTAURANT CLASSIFICATION PURSUANT**
44 **TO SECTION 42-5074 IF THE ADOPTED TAX:**

1 1. APPLIES ONLY WITH RESPECT TO TRANSACTIONS THAT OCCUR WITHIN THE
2 JURISDICTIONAL BOUNDARIES OF THE CITY, TOWN OR TAXING JURISDICTION.

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

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

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

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

18 Sec. 7. Rulemaking: exemption

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