AN ACT

AMENDING SECTION 36-136, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 8, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; RELATING TO THE DEPARTMENT OF HEALTH SERVICES.

(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; definitions

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 this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this 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 this 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 this state, the director may inspect any person or property in transportation through this 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, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third
parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. 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.

E. 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 of the department of health services.

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

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

H. Notwithstanding subsection I, 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 not longer than eighteen months.

I. 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, that are reasonably 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 THAT ARE 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 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 MEATPACKING 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 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 fundraising 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) A cottage food product that is not potentially hazardous or a
time or temperature control for safety food and that is prepared in a
kitchen of a private home for commercial purposes, including fruit jams
and jellies, dry mixes made with ingredients from approved sources, honey,
dry pasta and roasted nuts CONSISTENT WITH CHAPTER 8, ARTICLE 2 OF THIS
TITLE. Cottage food products must be packaged at home with an attached
label that clearly states the name and registration number of the food
preparer, lists all the ingredients in the product and the product's
production date and includes the following statement: "This product was
produced in a home kitchen that may process common food allergens and is
not subject to public health inspection." 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 complete a food handler training course from an
accredited program and maintain active certification. The food preparer
must register with an online registry established by the department
pursuant to paragraph 13 of this subsection. The food preparer must
display the preparer's certificate of registration when operating as a
temporary food establishment. For the purposes of this subdivision, "not
potentially hazardous" means cottage food products 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.

(h) A whole fruit or vegetable grown in a public school garden that
is washed and cut on-site for immediate consumption.
(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to 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 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 ensure that all ice sold or distributed for human consumption or for preserving or storing 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 preparing 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. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

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 **MAY NOT** 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 cottage food products for commercial purposes pursuant to paragraph 4 of this subsection AND CHAPTER 8, ARTICLE 2 OF THIS TITLE. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the THIS 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 IF the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. 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.

L. 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.

M. 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.

N. Until the department adopts exemptions by rule as required by
subsection I, paragraph 4, subdivision (f) of this section, food and drink
are exempt from the rules prescribed in subsection I 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.

O. Until the department adopts exemptions by rule as required by
subsection I, paragraph 4, subdivision (h) of this section, a whole fruit
or vegetable grown in a public school garden that is washed and cut
on-site for immediate consumption is exempt from the rules prescribed in
subsection I of this section.

P. Until the department adopts an exclusion by rule as required by
subsection I, paragraph 14 of this section, the standardized survey known
as "the hospital consumer assessment of healthcare providers and systems"
may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by
subsection I, paragraph 4, subdivision (j) of this section, spirituous
liquor and commercially prepackaged food, crackers or pretzels that meet
the requirements of subsection I, paragraph 4, subdivision (j) of this
section are exempt from the rules prescribed in subsection I of this
section.

R. For the purposes of this section:
1. "Cottage food product":
   (a) Means a food that is not potentially hazardous or a time or
temperature control for safety food as defined by the department in rule
   and that is prepared in a home kitchen by an individual who is registered
   with the department.
   (b) Does not include foods that require refrigeration, perishable
baked goods, salsas, sauces, fermented and pickled foods, meat, fish and
shellfish products, beverages, acidified food products, nut butters or
other reduced-oxygen packaged products HAS THE SAME MEANING PRESCRIBED IN
SECTION 36-931.
2. "Fetal demise" means a fetal death that occurs or is confirmed
in a licensed hospital. Fetal demise does not include an abortion as
defined in section 36-2151.
Sec. 2. Title 36, chapter 8, Arizona Revised Statutes, is amended
by adding article 2, to read:

ARTICLE 2. COTTAGE FOOD PRODUCTS

36-931. Definitions
IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "COTTAGE FOOD PRODUCT":
   (a) MEANS A FOOD THAT IS PREPARED IN A HOME KITCHEN BY OR UNDER THE
       SUPERVISION OF AN INDIVIDUAL WHO IS REGISTERED WITH THE DEPARTMENT AND
       THAT EITHER, AS DEFINED BY THE DEPARTMENT IN RULE:
       (i) IS NOT POTENTIALLY HAZARDOUS OR DOES NOT REQUIRE TIME OR
           TEMPERATURE CONTROL FOR SAFETY.
       (ii) IS POTENTIALLY HAZARDOUS OR REQUIRES TIME OR TEMPERATURE
           CONTROL FOR SAFETY.
   (b) DOES NOT INCLUDE ALCOHOLIC BEVERAGES, UNPASTEURIZED MILK OR
       FOODS THAT ARE OR THAT CONTAIN ALCOHOLIC BEVERAGES, FISH AND SHELLFISH
       PRODUCTS, MEAT, MEAT BY-PRODUCTS, Poultry OR POULTRY BY-PRODUCTS UNLESS
       THE SALE OF THOSE ITEMS IS ALLOWED BY FEDERAL LAW, INCLUDING ALL OF THE
       FOLLOWING:
       (i) Poultry, poultry by-products or poultry food products if the
           producer raised the poultry pursuant to the one thousand bird exemption
           set forth in 9 code of federal regulations section 381.10(c).
       (ii) poultry, poultry by-products or poultry food products if the
           poultry is from an inspected source pursuant to 9 code of federal
           regulations section 381.10(d).
       (iii) MEAT, MEAT BY-PRODUCTS OR MEAT FOOD PRODUCTS IF THE MEAT IS
           FROM AN INSPECTED SOURCE PURSUANT TO 9 CODE OF FEDERAL
           REGULATIONS SECTION 303.1(d).
2. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.
3. "HOME KITCHEN" MEANS A KITCHEN IN EITHER, AS APPLICABLE:
   (a) A RESIDENTIAL HOME AND OF A TYPE NORMALLY FOUND IN A
       RESIDENTIAL HOME.
   (b) A FACILITY FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES AND
       OF A TYPE NORMALLY FOUND IN A FACILITY FOR INDIVIDUALS WITH DEVELOPMENTAL
       DISABILITIES.
4. "POTENTIALLY HAZARDOUS" MEANS THAT A COTTAGE FOOD PRODUCT DOES
   NOT 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.
36-932. Labeling; food handler certification; sale and delivery requirements

A. Cottage food products must be packaged at home with an attached label that does all of the following:
   1. Clearly states the name and registration number of the food preparer.
   2. Lists all the ingredients in the cottage food product and the cottage food product's production date.
   3. Includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection."
   4. If the cottage food product was made in a facility for individuals with developmental disabilities, discloses that fact.

B. If a cottage food product is offered for sale online, the online platform must provide a notification that includes all of the following:
   1. The name and registration number of the food preparer.
   2. A list of all ingredients in the cottage food product and the cottage food product's production date.
   3. The following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection."

C. The person preparing the cottage food product or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with the online registry established by the department pursuant to section 36-136, subsection I, paragraph 13. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment.

D. A food preparer:
   1. Except as otherwise provided in this article, may sell cottage food products to the maximum extent allowed by federal law.
   2. May not store cottage food products or food preparation equipment outside of the food preparer's home.

E. Cottage food products may be sold and delivered only under the following conditions:
   1. Cottage food products that do not contain dairy, meat or poultry must be sold by the food preparer of the cottage food product or an agent of the food preparer, including a third-party vendor, and delivered to the consumer by the food preparer, the agent of the food preparer, the third-party vendor or a third-party carrier.
   2. Cottage food products that are dairy products or that contain meat or poultry must be sold by the food preparer of the cottage food product in person or remotely, including over the internet, and delivered to the consumer in person.
3. If a cottage food product is potentially hazardous or requires time or temperature control for safety and is transported before final delivery to consumers, the cottage food product must be maintained at an appropriate temperature during transport, cannot be transported more than once and cannot be transported for longer than two hours.

4. If a cottage food product is sold by a third-party vendor, the cottage food product must be sold in a separate section of the store or on a separate display case from nonhomemade food items and the vendor must display a sign that indicates that the cottage food products are homemade and exempt from state licensing and inspection.

F. A cottage food product may not:

1. Be used as an ingredient in food products sold at a permitted retail food establishment.

2. Include marijuana or marijuana by-products.

G. A cottage food product shall contain only ingredients that are from sources that are approved by law.

H. A home kitchen that is used to prepare cottage food products may not operate as a commissary for the purposes of section 36-1761.

36-933. Applicability of article; rules; enforcement

A. This article:

1. Is not more restrictive than the applicable federal laws.

2. Does not impede the department from investigating any reported foodborne illness.

3. Does not change the requirements for brand inspections, animal health inspections or any food inspections required by state or federal law, or change the requirements for the sale of milk, milk products, raw milk or raw milk products pursuant to section 3-606.

4. Does not affect any county or municipal building code, zoning code or ordinance or other land use regulation.

B. The department shall adopt rules relating to cottage food products that are consistent with this article and section 36-136, subsection I and that include both of the following:

1. A provision requiring recertification as a food handler or suspension or revocation of an individual’s registration for failing to comply with the requirements of this article or impeding in the investigation of a reported foodborne illness.

2. Guidance relating to approved ingredient sources.

C. The department may enforce this article.

D. A county may not be required to enforce this article.

E. This article does not prevent the department and a local health agency, environmental agency or public health services agency from entering into a delegation agreement to enforce this article.