

REFERENCE TITLE: **spirituous liquor; DHS; inspection; exemption**

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
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HB 2618

Introduced by
Representatives Hernandez A: Contreras L, Crews, Dunn, Gress, Hernandez C,
Smith; Senators Bolick, Gonzales, Shope

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; rules; definitions

6 A. The director shall:

7 1. Be the executive officer of the department of health services
8 and the state registrar of vital statistics but shall not receive
9 compensation 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
13 shall appoint or remove personnel as necessary for the efficient work of
14 the department and shall prescribe the duties of all personnel. The
15 director may abolish any office or position in the department that the
16 director believes is unnecessary.

17 4. Administer and enforce the laws relating to health and
18 sanitation 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
21 of any health law or rule of this state.

22 6. Exercise general supervision over all matters relating to
23 sanitation and health throughout this state. When in the opinion of the
24 director it is necessary or advisable, a sanitary survey of the whole or
25 of any part of this state shall be made. The director may enter, examine
26 and survey any source and means of water supply, sewage disposal plant,
27 sewerage system, prison, public or private place of detention, asylum,
28 hospital, school, public building, private institution, factory, workshop,
29 tenement, public washroom, public restroom, public toilet and toilet
30 facility, public eating room and restaurant, dairy, milk plant or food
31 manufacturing or processing plant, and any premises in which the director
32 has reason to believe there exists a violation of any health law or rule
33 of this state that 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
37 exists a violation of any health law or rule of this state, the director
38 may inspect any person or property in transportation through this state,
39 and any car, boat, train, trailer, airplane or other vehicle in which that
40 person or property is transported, and may enforce detention or
41 disinfection as reasonably necessary for the public health if there exists
42 a violation of any health law or rule.

43 C. The director, after consultation with the department of
44 administration, may take all necessary steps to enhance the highest and
45 best use of the state hospital property, including contracting with third

1 parties to provide services, entering into short-term lease agreements
2 with third parties to occupy or renovate existing buildings and entering
3 into long-term lease agreements to develop the land and buildings. The
4 director shall deposit any monies collected from contracts and lease
5 agreements entered into pursuant to this subsection in the Arizona state
6 hospital charitable trust fund established by section 36-218. At least
7 thirty days before issuing a request for proposals pursuant to this
8 subsection, the department of health services shall hold a public hearing
9 to receive community and provider input regarding the highest and best use
10 of the state hospital property related to the request for proposals. The
11 department shall report to the joint committee on capital review on the
12 terms, conditions and purpose of any lease or sublease agreement entered
13 into pursuant to this subsection relating to state hospital lands or
14 buildings or the disposition of real property pursuant to this subsection,
15 including state hospital lands or buildings, and the fiscal impact on the
16 department and any revenues generated by the agreement. Any lease or
17 sublease agreement entered into pursuant to this subsection relating to
18 state hospital lands or buildings or the disposition of real property
19 pursuant to this subsection, including state hospital lands or buildings,
20 must be reviewed by the joint committee on capital review.

21 D. The director may deputize, in writing, any qualified officer or
22 employee in the department to do or perform on the director's behalf any
23 act the director is by law empowered to do or charged with the
24 responsibility of doing.

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

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

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

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

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

5 H. Notwithstanding subsection I, paragraph 1 of this section, the
6 director may define and prescribe emergency measures for detecting,
7 reporting, preventing and controlling communicable or infectious diseases
8 or conditions if the director has reasonable cause to believe that a
9 serious threat to public health and welfare exists. Emergency measures
10 are effective for not longer than eighteen months.

11 I. The director, by rule, shall:

12 1. Define and prescribe reasonably necessary measures for
13 detecting, reporting, preventing and controlling communicable and
14 preventable diseases. The rules shall declare certain diseases **THAT ARE**
15 reportable. The rules shall prescribe measures, including isolation or
16 quarantine, that are reasonably required to prevent the occurrence of, or
17 to seek early detection and alleviation of, disability, insofar as
18 possible, from communicable or preventable diseases. The rules shall
19 include reasonably necessary measures to control animal diseases
20 transmittable to humans.

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

27 3. Define and prescribe reasonably necessary procedures that are
28 not inconsistent with law in regard to the use and accessibility of vital
29 records, delayed birth registration and the completion, change and
30 amendment of vital records.

31 4. Except as relating to the beneficial use of wildlife meat by
32 public institutions and charitable organizations pursuant to title 17,
33 prescribe reasonably necessary measures to ensure that all food or drink,
34 including meat and meat products and milk and milk products sold at the
35 retail level, provided for human consumption is free from unwholesome,
36 poisonous or other foreign substances and filth, insects or
37 disease-causing organisms. The rules shall prescribe reasonably necessary
38 measures governing the production, processing, labeling, storing,
39 handling, serving and transportation of these products. The rules shall
40 prescribe minimum standards for the sanitary facilities and conditions
41 that shall be maintained in any warehouse, restaurant or other premises,
42 except a ~~meat packing~~ **MEATPACKING** plant, slaughterhouse, wholesale meat
43 processing plant, dairy product manufacturing plant or trade product
44 manufacturing plant. The rules shall prescribe minimum standards for any
45 truck or other vehicle in which food or drink is produced, processed,

1 stored, handled, served or transported. The rules shall provide for the
2 inspection and licensing of premises and vehicles so used, and for
3 abatement as public nuisances of any premises or vehicles that do not
4 comply with the rules and minimum standards. The rules shall provide an
5 exemption relating to food or drink that is:

6 (a) Served at a noncommercial social event such as a potluck.

7 (b) Prepared at a cooking school that is conducted in an
8 owner-occupied home.

9 (c) Not potentially hazardous and prepared in a kitchen of a
10 private home for occasional sale or distribution for noncommercial
11 purposes.

12 (d) Prepared or served at an employee-conducted function that lasts
13 less than four hours and is not regularly scheduled, such as an employee
14 recognition, an employee fundraising or an employee social event.

15 (e) Offered at a child care facility and limited to commercially
16 prepackaged food that is not potentially hazardous and whole fruits and
17 vegetables that are washed and cut on-site for immediate consumption.

18 (f) Offered at locations that sell only commercially prepackaged
19 food or drink that is not potentially hazardous.

20 (g) A cottage food product that is not potentially hazardous or a
21 time or temperature control for safety food and that is prepared in a
22 kitchen of a private home for commercial purposes, including fruit jams
23 and jellies, dry mixes made with ingredients from approved sources, honey,
24 dry pasta and roasted nuts. Cottage food products must be packaged at
25 home with an attached label that clearly states the name and registration
26 number of the food preparer, lists all the ingredients in the product and
27 the product's production date and includes the following statement: "This
28 product was produced in a home kitchen that may process common food
29 allergens and is not subject to public health inspection." If the product
30 was made in a facility for individuals with developmental disabilities,
31 the label must also disclose that fact. The person preparing the food or
32 supervising the food preparation must complete a food handler training
33 course from an accredited program and maintain active certification. The
34 food preparer must register with an online registry established by the
35 department pursuant to paragraph 13 of this subsection. The food preparer
36 must display the preparer's certificate of registration when operating as
37 a temporary food establishment. For the purposes of this subdivision,
38 "not potentially hazardous" means cottage food products that meet the
39 requirements of the food code published by the United States food and drug
40 administration, as modified and incorporated by reference by the
41 department by rule.

42 (h) A whole fruit or vegetable grown in a public school garden that
43 is washed and cut on-site for immediate consumption.

44 (i) Produce in a packing or holding facility that is subject to the
45 United States food and drug administration produce safety rule (21 Code of

1 Federal Regulations part 112) as administered by the Arizona department of
2 agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes
3 of this subdivision, "holding", "packing" and "produce" have the same
4 meanings prescribed in section 3-525.

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

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

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

21 (k) SPIRITUOUS LIQUOR PRODUCED BY A PRODUCER THAT IS LICENSED BY
22 THE DEPARTMENT OF LIQUOR LICENSES AND CONTROL OR SPIRITUOUS LIQUOR
23 IMPORTED AND SOLD BY WHOLESALERS THAT IS LICENSED BY THE DEPARTMENT OF
24 LIQUOR LICENSES AND CONTROL. THIS EXEMPTION INCLUDES ALL COMMERCIALY
25 PREPACKAGED SPIRITUOUS LIQUOR AND ALL SPIRITUOUS LIQUOR Poured AT A
26 LICENSED SPECIAL EVENT, FESTIVAL OR FAIR IN THIS STATE.

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

35 6. Prescribe reasonably necessary measures regarding production,
36 processing, labeling, handling, serving and transportation of bottled
37 water to ensure that all bottled drinking water distributed for human
38 consumption is free from unwholesome, poisonous, deleterious or other
39 foreign substances and filth or disease-causing organisms. The rules
40 shall prescribe minimum standards for the sanitary facilities and
41 conditions that shall be maintained at any source of water, bottling plant
42 and truck or vehicle in which bottled water is produced, processed, stored
43 or transported and shall provide for inspection and certification of
44 bottled drinking water sources, plants, processes and transportation and
45 for abatement as a public nuisance of any water supply, label, premises,

1 equipment, process or vehicle that does not comply with the minimum
2 standards. The rules shall prescribe minimum standards for
3 bacteriological, physical and chemical quality for bottled water and for
4 ~~the submission of~~ SUBMITTING samples at intervals prescribed in the
5 standards.

6 7. Define and prescribe reasonably necessary measures governing ice
7 production, handling, storing and distribution to ensure that all ice sold
8 or distributed for human consumption or for preserving or storing food for
9 human consumption is free from unwholesome, poisonous, deleterious or
10 other foreign substances and filth or disease-causing organisms. The
11 rules shall prescribe minimum standards for the sanitary facilities and
12 conditions and the quality of ice that shall be maintained at any ice
13 plant, storage and truck or vehicle in which ice is produced, stored,
14 handled or transported and shall provide for inspection and licensing of
15 the premises and vehicles, and for abatement as public nuisances of ice,
16 premises, equipment, processes or vehicles that do not comply with the
17 minimum standards.

18 8. Define and prescribe reasonably necessary measures concerning
19 sewage and excreta disposal, garbage and trash collection, storage and
20 disposal, and water supply for recreational and summer camps, campgrounds,
21 motels, tourist courts, trailer coach parks and hotels. The rules shall
22 prescribe minimum standards for preparing food in community kitchens,
23 adequacy of excreta disposal, garbage and trash collection, storage and
24 disposal and water supply for recreational and summer camps, campgrounds,
25 motels, tourist courts, trailer coach parks and hotels and shall provide
26 for inspection of these premises and for abatement as public nuisances of
27 any premises or facilities that do not comply with the rules. Primitive
28 camp and picnic grounds offered by this state or a political subdivision
29 of this state are exempt from rules adopted pursuant to this paragraph but
30 are subject to approval by a county health department under sanitary
31 regulations adopted pursuant to section 36-183.02. Rules adopted pursuant
32 to this paragraph do not apply to two or fewer recreational vehicles as
33 defined in section 33-2102 that are not park models or park trailers, that
34 are parked on owner-occupied residential property for less than sixty days
35 and for which no rent or other compensation is paid. For the purposes of
36 this paragraph, "primitive camp and picnic grounds" means camp and picnic
37 grounds that are remote in nature and without accessibility to public
38 infrastructure such as water, electricity and sewer.

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

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

13 11. Prescribe reasonably necessary measures to keep confidential
14 information relating to diagnostic findings and treatment of patients, as
15 well as information relating to contacts, suspects and associates of
16 communicable disease patients. ~~In no event shall~~ Confidential information
17 **MAY NOT** be made available for political or commercial purposes.

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

22 13. Establish an online registry of food preparers that are
23 authorized to prepare cottage food products for commercial purposes
24 pursuant to paragraph 4 of this subsection. A registered food preparer
25 shall renew the registration every three years and shall provide to the
26 department updated registration information within thirty days after any
27 change.

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

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

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

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

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

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

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

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

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

40 R. For the purposes of this section:

41 1. "Cottage food product":

42 (a) Means a food that is not potentially hazardous or a time or
43 temperature control for safety food as defined by the department in rule
44 and that is prepared in a home kitchen by an individual who is registered
45 with the department.

1 (b) Does not include foods that require refrigeration, perishable
2 baked goods, salsas, sauces, fermented and pickled foods, meat, fish and
3 shellfish products, beverages, acidified food products, nut butters or
4 other reduced-oxygen packaged products.

5 2. "Fetal demise" means a fetal death that occurs or is confirmed
6 in a licensed hospital. Fetal demise does not include an abortion as
7 defined in section 36-2151.