

REFERENCE TITLE: food safety regulation

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2582

Introduced by
Representative Stump, Senators Allen: Aboud

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
6 A. The director shall:
7 1. Be the executive officer of the department of health services and
8 the state registrar of vital statistics but shall not receive compensation
9 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 shall
13 appoint or remove personnel as necessary for the efficient work of the
14 department and shall prescribe the duties of all personnel. The director may
15 abolish any office or position in the department that the director believes
16 is unnecessary.
17 4. Administer and enforce the laws relating to health and sanitation
18 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 of
21 any health law or rule of the state.
22 6. Exercise general supervision over all matters relating to
23 sanitation and health throughout the state. When in the opinion of the
24 director it is necessary or advisable, a sanitary survey of the whole or of
25 any part of the state shall be made. The director may enter, examine and
26 survey any source and means of water supply, sewage disposal plant, sewerage
27 system, prison, public or private place of detention, asylum, hospital,
28 school, public building, private institution, factory, workshop, tenement,
29 public washroom, public ~~rest-room~~ 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 has
32 reason to believe there exists a violation of any health law or rule of the
33 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 exists a
37 violation of any health law or rule of the state, the director may inspect
38 any person or property in transportation through the state, and any car,
39 boat, train, trailer, airplane or other vehicle in which that person or
40 property is transported, and may enforce detention or disinfection as
41 reasonably necessary for the public health if there exists a violation of any
42 health law or rule.
43 C. The director may deputize, in writing, any qualified officer or
44 employee in the department to do or perform on the director's behalf any act

1 the director is by law empowered to do or charged with the responsibility of
2 doing.

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

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

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

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

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

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

33 H. The director ~~shall~~, by rule, **SHALL**:

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

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

1 regarding the removal, transportation, cremation, interment or disinterment
2 of any dead human body.

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

7 4. Except as relating to the beneficial use of wildlife meat by public
8 institutions and charitable organizations pursuant to title 17, prescribe
9 reasonably necessary measures to assure that all food or drink, including
10 meat and meat products and milk and milk products sold at the retail level,
11 provided for human consumption is free from unwholesome, poisonous or other
12 foreign substances and filth, insects or disease-causing organisms. The
13 rules shall prescribe reasonably necessary measures governing the production,
14 processing, labeling, storing, handling, serving and transportation of ~~such~~
15 ~~food and drink~~ THESE PRODUCTS. The rules shall prescribe minimum standards
16 for the sanitary facilities and conditions that shall be maintained in any
17 warehouse, restaurant or other premises, except a meat packing plant,
18 slaughterhouse, wholesale meat processing plant, dairy product manufacturing
19 plant or trade product manufacturing plant. The rules shall prescribe
20 minimum standards for any truck or other vehicle in which food or drink is
21 produced, processed, stored, handled, served or transported. The rules shall
22 provide for the inspection and licensing of premises and vehicles so used,
23 and for abatement as public nuisances of any premises or vehicles that do not
24 comply with the rules and minimum standards. The rules shall provide an
25 exemption relating to food and drink that is:

26 (a) Served at a noncommercial social event ~~and~~ that takes place at a
27 workplace, such as a potluck.

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

30 (c) Not potentially hazardous AND PREPARED IN A KITCHEN OF A PRIVATE
31 HOME FOR OCCASIONAL SALE OR DISTRIBUTION FOR NONCOMMERCIAL PURPOSES.

32 (d) Prepared or served at an employee-conducted function that lasts
33 less than four hours and is not regularly scheduled, such as an employee
34 recognition, an employee fund-raising or an employee social event.

35 (e) OFFERED AT A CHILD CARE FACILITY AND LIMITED TO COMMERCIALY
36 PREPACKAGED FOOD THAT IS NOT POTENTIALLY HAZARDOUS AND WHOLE FRUITS AND
37 VEGETABLES THAT ARE WASHED AND CUT ON SITE FOR IMMEDIATE CONSUMPTION.

38 (f) OFFERED AT LOCATIONS THAT SELL ONLY COMMERCIALY PREPACKAGED FOOD
39 AND DRINK THAT IS NOT POTENTIALLY HAZARDOUS AND THAT IS DISPLAYED IN AN AREA
40 OF LESS THAN TEN LINEAL FEET.

41 5. Prescribe reasonably necessary measures to assure that all meat and
42 meat products for human consumption handled at the retail level are delivered
43 in a manner and from sources approved by the Arizona department of
44 agriculture and are free from unwholesome, poisonous or other foreign
45 substances and filth, insects or disease-causing organisms. The rules shall

1 prescribe standards for sanitary facilities to be used in identity, storage,
 2 handling and sale of all meat and meat products sold at the retail level.

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

18 7. Define and prescribe reasonably necessary measures governing ice
 19 production, handling, storing and distribution to assure that all ice sold or
 20 distributed for human consumption or for the preservation or storage of food
 21 for human consumption is free from unwholesome, poisonous, deleterious or
 22 other foreign substances and filth or disease-causing organisms. The rules
 23 shall prescribe minimum standards for the sanitary facilities and conditions
 24 and the quality of ice that shall be maintained at any ice plant, storage and
 25 truck or vehicle in which ice is produced, stored, handled or transported and
 26 shall provide for inspection and licensing of the premises and vehicles, and
 27 for abatement as public nuisances of ice, premises, equipment, processes or
 28 vehicles that do not comply with the minimum standards.

29 8. Define and prescribe reasonably necessary measures concerning
 30 sewage and excreta disposal, garbage and trash collection, storage and
 31 disposal, and water supply for recreational and summer camps, campgrounds,
 32 motels, tourist courts, trailer coach parks and hotels. The rules shall
 33 prescribe minimum standards for preparation of food in community kitchens,
 34 adequacy of excreta disposal, garbage and trash collection, storage and
 35 disposal and water supply for recreational and summer camps, campgrounds,
 36 motels, tourist courts, trailer coach parks and hotels and shall provide for
 37 inspection of ~~such~~ THESE premises and for abatement as public nuisances of
 38 any premises or facilities that do not comply with the rules.

39 9. Define and prescribe reasonably necessary measures concerning the
 40 sewage and excreta disposal, garbage and trash collection, storage and
 41 disposal, water supply and food preparation of all public schools. The rules
 42 shall prescribe minimum standards for sanitary conditions that shall be
 43 maintained in any public school and shall provide for inspection of ~~such~~
 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 to
3 prevent deleterious health conditions at ~~such~~ THESE places. The rules shall
4 prescribe minimum standards for sanitary conditions that shall be maintained
5 at any public or semipublic swimming pool or bathing place and shall provide
6 for inspection of ~~such~~ THESE premises and for abatement as public nuisances
7 of any premises and facilities that do not comply with the minimum standards.
8 The rules shall be developed in cooperation with the director of the
9 department of environmental quality and shall be consistent with the rules
10 adopted by the director of the department of environmental quality pursuant
11 to section 49-104, subsection B, paragraph 12.

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

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

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

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

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

40 L. After consultation with the state superintendent of public
41 instruction, the director shall prescribe the criteria the department shall
42 use in deciding whether or not to notify a local school district that a pupil
43 in the district has tested positive for the human immunodeficiency virus
44 antibody. The director shall prescribe the procedure by which the department
45 shall notify a school district if, pursuant to these criteria, the department

1 determines that notification is warranted in a particular situation. This
2 procedure shall include a requirement that before notification the department
3 shall determine to its satisfaction that the district has an appropriate
4 policy relating to nondiscrimination of the infected pupil and
5 confidentiality of test results and that proper educational counseling has
6 been or will be provided to staff and pupils.

7 M. Until the department adopts exemptions by rule as required by
8 subsection H, paragraph 4, subdivision (b) of this section, a kitchen in a
9 private home that is used as a cooking school and that prepares and offers
10 food to students is exempt from the rules prescribed in subsection H of this
11 section if all of the following are true:

- 12 1. Only one cooking school meal per day is prepared and served.
- 13 2. The meal is served to not more than fifteen cooking school
14 students.
- 15 3. The students are informed by a statement contained in a published
16 advertisement, mailed brochure and placard posted at the cooking school's
17 registration that the food is prepared in a kitchen that is not regulated and
18 inspected by the department or by a local health authority.