

Conference Engrossed

State of Arizona
Senate
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 313

SENATE BILL 1167

AN ACT

AMENDING SECTIONS 36-183.02 AND 36-183.03, ARIZONA REVISED STATUTES; REPEALING SECTION 36-183.04, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 36-183.04; AMENDING TITLE 36, CHAPTER 1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-183.05, 36-183.06 AND 36-183.07; AMENDING SECTION 36-602, ARIZONA REVISED STATUTES; RELATING TO COUNTY SANITARY REGULATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-183.02, Arizona Revised Statutes, is amended to
3 read:

4 36-183.02. Sanitary regulations; notice

5 A. Each county shall:

6 1. Investigate all nuisances, sources of filth and causes of sickness
7 and make regulations necessary for the public health and safety of the
8 inhabitants.

9 2. Provide by regulation for periodic inspection and licensing of
10 retailers and wholesalers who convert a pasteurized mix into frozen dessert,
11 as defined in section 3-601, to assure that the frozen dessert is free from
12 unwholesome, poisonous and other foreign substances and disease-causing
13 organisms. The county may assess a fee to cover the costs of inspecting and
14 licensing.

15 B. The county shall give notice of all general orders and regulations
16 by publishing them in a newspaper published within the jurisdiction of the
17 county. If there is no such newspaper, the county shall post the orders and
18 regulations in five public places within the jurisdiction of the county and
19 this constitutes legal notice to all persons.

20 ~~C. A person who violates a published order or regulation of a county
21 is guilty of a class 3 misdemeanor.~~

22 Sec. 2. Section 36-183.03, Arizona Revised Statutes, is amended to
23 read:

24 36-183.03. Maintaining unsanitary premises; violation;
25 classification

26 A person who VIOLATES A PUBLISHED ORDER OR REGULATION OF A COUNTY OR
27 maintains in an unsanitary condition premises located within the county and
28 who refuses or fails to place the premises in a sanitary condition within
29 three days after being ordered to do so by the director of a local health
30 DEPARTMENT, COUNTY ENVIRONMENTAL department or public health services
31 district, the county sanitary officer or any county peace officer acting
32 under the direction and authority of the director or who thereafter refuses
33 or fails to maintain the premises in a sanitary condition is guilty of a
34 class 3 misdemeanor IF THE PERSON HOLDS A VALID PERMIT UNDER THIS ARTICLE OR
35 A CLASS 2 MISDEMEANOR IF THE PERSON DOES NOT HOLD A VALID PERMIT UNDER THIS
36 ARTICLE.

37 Sec. 3. Repeal

38 Section 36-183.04, Arizona Revised Statutes, is repealed.

39 Sec. 4. Title 36, chapter 1, article 4, Arizona Revised Statutes, is
40 amended by adding a new section 36-183.04, to read:

41 36-183.04. Notice of violation; civil penalties; administrative
42 hearings

43 A. IF THE DIRECTOR OF A LOCAL HEALTH DEPARTMENT, COUNTY ENVIRONMENTAL
44 DEPARTMENT OR PUBLIC HEALTH SERVICES DISTRICT HAS REASON TO BELIEVE THAT A

1 PERSON HAS VIOLATED THIS ARTICLE OR A SANITARY ORDINANCE OR REGULATION, THE
2 DIRECTOR MAY ISSUE A NOTICE OF VIOLATION AND DEMAND FOR COMPLIANCE BY
3 CERTIFIED OR REGISTERED MAIL OR BY HAND DELIVERY TO THE RESPONDENT.

4 B. THE NOTICE OF VIOLATION AND DEMAND FOR COMPLIANCE MUST STATE WITH
5 REASONABLE SPECIFICITY THE NATURE OF THE VIOLATION AND THE DEADLINE FOR
6 COMPLIANCE. THE NOTICE OF VIOLATION SHALL ALSO STATE THAT THE RESPONDENT MAY
7 REQUEST A HEARING.

8 C. UNLESS THE RESPONDENT EITHER COMPLIES WITHIN THE STATED DEADLINE
9 OR REQUESTS A HEARING WITHIN FIFTEEN DAYS AFTER SERVICE OF THE NOTICE OF
10 VIOLATION AND DEMAND FOR COMPLIANCE, THE DIRECTOR OF THE LOCAL HEALTH
11 DEPARTMENT, COUNTY ENVIRONMENTAL DEPARTMENT OR PUBLIC HEALTH SERVICES
12 DISTRICT MAY ISSUE A COMPLIANCE ORDER CONSISTENT WITH THE TERMS OF THE NOTICE
13 OF VIOLATION.

14 D. THE DIRECTOR OF A LOCAL HEALTH DEPARTMENT, COUNTY ENVIRONMENTAL
15 DEPARTMENT OR PUBLIC HEALTH SERVICES DISTRICT MAY APPOINT A HEARING OFFICER
16 TO CONDUCT A HEARING PURSUANT TO THIS SECTION. HEARINGS HELD PURSUANT TO
17 THIS SECTION SHALL BE CONDUCTED IN THE SAME MANNER AS HEARINGS ARE CONDUCTED
18 PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 6. THE HEARING OFFICER SHALL EITHER
19 ISSUE OR DENY A COMPLIANCE ORDER AND SHALL MAKE A FINDING REGARDING A CIVIL
20 PENALTY.

21 E. A COMPLIANCE ORDER ISSUED PURSUANT TO THIS SECTION IS FINAL AND
22 ENFORCEABLE IN SUPERIOR COURT UNLESS THE RESPONDENT FILES AN APPEAL TO THE
23 DIRECTOR OF THE LOCAL HEALTH DEPARTMENT, COUNTY ENVIRONMENTAL DEPARTMENT OR
24 PUBLIC HEALTH SERVICES DISTRICT WITHIN FIFTEEN DAYS AFTER RECEIVING THE
25 COMPLIANCE ORDER.

26 F. ON APPEAL, THE DIRECTOR MAY AFFIRM, MODIFY OR VACATE THE HEARING
27 OFFICER'S DECISION. THE DIRECTOR SHALL CONSIDER THE FACTORS PRESCRIBED IN
28 SUBSECTION H. THE DIRECTOR'S DECISION IS ENFORCEABLE AS A JUDGMENT IN
29 SUPERIOR COURT. THE DIRECTOR'S DECISION IS SUBJECT TO APPEAL PURSUANT TO
30 TITLE 12, CHAPTER 7, ARTICLE 6.

31 G. A COMPLIANCE ORDER ISSUED PURSUANT TO THIS SECTION MAY PROVIDE FOR
32 A CIVIL PENALTY OF NOT MORE THAN SEVEN HUNDRED FIFTY DOLLARS FOR EACH
33 VIOLATION BY AN INDIVIDUAL AND NOT MORE THAN FIVE THOUSAND DOLLARS FOR A
34 VIOLATION BY AN ENTERPRISE. A COMPLIANCE ORDER SHALL NOT IMPOSE A CIVIL
35 PENALTY FOR THE SAME ACTS FOR WHICH A COURT HAS PREVIOUSLY IMPOSED A CIVIL
36 OR CRIMINAL PENALTY.

37 H. IN DETERMINING THE AMOUNT OF A CIVIL PENALTY UNDER THIS SECTION,
38 THE DIRECTOR AND THE HEARING OFFICER SHALL CONSIDER THE FOLLOWING:

- 39 1. THE SERIOUSNESS OF THE VIOLATION.
- 40 2. AS AN AGGRAVATING FACTOR ONLY, ANY ECONOMIC BENEFIT THAT RESULTS
41 FROM THE VIOLATION.
- 42 3. THE HISTORY OF THAT VIOLATION.
- 43 4. THE ECONOMIC IMPACT OF THE PENALTY ON THE VIOLATOR.
- 44 5. ANY GOOD FAITH EFFORTS TO COMPLY WITH THE APPLICABLE REQUIREMENTS.

1 COLLECTED PURSUANT TO THIS SECTION IN THE GENERAL FUND OF THE COUNTY WHERE
2 THE ACTION WAS FILED.

3 D. THE DIRECTOR OF A LOCAL HEALTH DEPARTMENT, COUNTY ENVIRONMENTAL
4 DEPARTMENT OR A PUBLIC HEALTH SERVICES DISTRICT MAY SETTLE ANY ACTION FILED
5 PURSUANT TO THIS SECTION BY SUBMITTING A CONSENT DECREE THAT IS AGREED TO BY
6 THE PARTIES FOR APPROVAL BY THE SUPERIOR COURT.

7 36-183.06. Health inspectors; violations; notice to appear

8 A. IF A HEALTH INSPECTOR HAS REASONABLE CAUSE TO BELIEVE THAT A PERSON
9 IS VIOLATING THIS ARTICLE, A SANITARY ORDINANCE OR REGULATION ADOPTED OR
10 ORDER ISSUED PURSUANT TO THIS ARTICLE OR AN ORDER ISSUED PURSUANT TO SECTION
11 36-602, THE INSPECTOR MAY SERVE A NOTICE OF VIOLATION THAT CONTAINS A
12 SPECIFIC TIME AND PLACE FOR THE ALLEGED VIOLATOR TO APPEAR AND THAT SPECIFIES
13 THE STATUTE, ORDINANCE, REGULATION OR ORDER VIOLATED. THE INSPECTOR MAY
14 SERVE THE NOTICE OF VIOLATION ON THE PERSON IN THE SAME MANNER PROVIDED IN
15 SECTION 13-3903. THE NOTICE OF VIOLATION SHALL SPECIFY THE PENALTY SOUGHT
16 PURSUANT TO SECTION 36-183.07.

17 B. IF A HEALTH INSPECTOR IS UNABLE TO PERSONALLY SERVE THE NOTICE, THE
18 NOTICE MAY BE SERVED IN THE SAME MANNER PRESCRIBED FOR ALTERNATIVE METHODS
19 OF SERVICE BY THE ARIZONA RULES OF CRIMINAL PROCEDURE, AND A RESPONSE IS
20 REQUIRED WITHIN THE TIME PRESCRIBED BY THE RULE UNDER WHICH IT IS SERVED.

21 C. THE NOTICE MUST STATE THE TIME PRESCRIBED FOR A RESPONSE.

22 36-183.07. Violation; classification

23 A. A PERSON WHO VIOLATES THIS ARTICLE, A SANITARY ORDINANCE OR
24 REGULATION ADOPTED OR ORDER ISSUED PURSUANT TO THIS ARTICLE OR AN ORDER
25 ISSUED PURSUANT TO SECTION 36-602 IS GUILTY OF A CLASS 3 MISDEMEANOR IF THE
26 PERSON HOLDS A VALID PERMIT ISSUED UNDER THIS ARTICLE OR A CLASS 2
27 MISDEMEANOR IF THE PERSON DOES NOT HOLD A VALID PERMIT.

28 B. A PENALTY UNDER THIS SECTION SHALL NOT BE IMPOSED FOR THE SAME ACTS
29 FOR WHICH A CIVIL PENALTY HAS BEEN IMPOSED UNDER THIS ARTICLE.

30 C. IN DETERMINING THE PENALTY UNDER THIS SECTION, THE COURT SHALL
31 CONSIDER ALL OF THE FOLLOWING:

32 1. THE SERIOUSNESS OF THE VIOLATION.

33 2. AS AN AGGRAVATING FACTOR ONLY, ANY ECONOMIC BENEFIT THAT RESULTS
34 FROM THE VIOLATION.

35 3. THE HISTORY OF THAT VIOLATION.

36 4. THE ECONOMIC IMPACT OF THE PENALTY ON THE VIOLATOR.

37 5. ANY GOOD FAITH EFFORTS TO COMPLY WITH THE APPLICABLE REQUIREMENTS.

38 6. THE DURATION OF THE VIOLATION AS ESTABLISHED BY ANY CREDIBLE
39 EVIDENCE.

40 7. PAYMENT BY THE VIOLATOR OF PENALTIES PREVIOUSLY ASSESSED FOR THE
41 SAME VIOLATION.

42 8. OTHER FACTORS THE COURT DEEMS RELEVANT.

43 D. LACK OF CRIMINAL INTENT DOES NOT CONSTITUTE A DEFENSE TO VIOLATIONS
44 ALLEGED UNDER THIS SECTION.

1 Sec. 6. Section 36-602, Arizona Revised Statutes, is amended to read:
2 36-602. Abatement of nuisances, sources of filth and causes of
3 sickness; civil penalty; property assessment;
4 procedure

5 A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, when a nuisance,
6 source of filth or cause of sickness exists on private property, the county
7 board of health, or the local health department, THE COUNTY ENVIRONMENTAL
8 DEPARTMENT OR THE PUBLIC HEALTH SERVICE DISTRICT shall order the owner or
9 occupant to remove it within twenty-four hours at ~~his own~~ THE expense OF THE
10 OWNER OR OCCUPANT. The order may be ~~given~~ DELIVERED to the owner or occupant
11 personally, or left at ~~his~~ THE OWNER OR OCCUPANT'S usual place of abode OR
12 SERVED ON THE OWNER OR OCCUPANT IN THE SAME MANNER AS PROVIDED FOR SERVICE
13 OF PROCESS UNDER THE ARIZONA RULES OF CIVIL PROCEDURE. If the order is not
14 complied with, the board or department shall MAY impose a civil penalty of
15 ~~not more than five hundred dollars~~ PURSUANT TO SECTION 36-183.04 and shall
16 cause the nuisance, source of filth or cause of sickness to be removed, and
17 expenses of removal shall be paid by the owner, occupant or other person who
18 caused the nuisance, source of filth or cause of sickness.

19 B. A city or county may prescribe by SANITARY ordinance or regulation
20 a procedure for making the actual cost of this removal or abatement,
21 including the actual costs of any additional inspection and other incidental
22 costs in connection with the removal or abatement, an assessment on the lots
23 and tracts of land on which the nuisance, source of filth or cause of
24 sickness was abated or removed, subject to the following:

25 1. Any such ordinance or regulation shall include a provision for
26 appeal of the assessment to the governing body or the board of supervisors
27 or its designee.

28 2. The assessment, from the date of its recording in the office of the
29 county recorder in the county where the lot or tract of land is located, is
30 a lien on the lot or tract of land until paid.

31 3. Any assessment recorded is prior and superior to all other liens,
32 obligations or other encumbrances, except liens for general taxes and prior
33 recorded mortgages.

34 4. The city or county may bring an action to enforce the lien in the
35 superior court in the county in which the property is located at any time
36 after the recording of the assessment, but failure to enforce the lien by
37 this action does not affect its validity. The recorded assessment is prima
38 facie evidence of the truth of all matters recited in the assessment and of
39 the regularity of all proceedings before the recording of the assessment.

40 5. A prior assessment for the purposes provided in this section is not
41 a bar to a subsequent assessment or assessments for these purposes, and any
42 number of liens on the same lot or tract of land may be enforced in the same
43 action.

1 6. An assessment or lien recorded pursuant to this section does not
2 limit, restrict or otherwise affect the authority of a city or county to
3 undertake any additional enforcement action that is authorized by law,
4 including applicable ordinances or regulations.
5 7. The ordinance OR REGULATION shall provide notice to all
6 lienholders.

APPROVED BY THE GOVERNOR MAY 28, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 29, 2002.



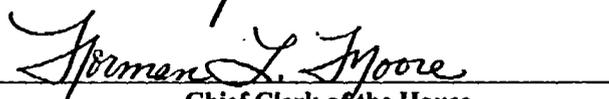
ON RECONSIDERATION

Passed the House April 30, 2002,

by the following vote: 32 Ayes,

21 Nays, 7 Not Voting


Speaker of the House


Chief Clerk of the House

~~Passed the Senate _____, 20__~~

~~by the following vote: _____ Ayes,~~

~~_____ Nays, _____ Not Voting~~

~~_____
President of the Senate~~

~~_____
Secretary of the Senate~~

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

~~_____ day of _____, 20__~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

~~Approved this _____ day of~~

~~_____, 20__~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

~~This Bill was received by the Secretary of State~~

~~this _____ day of _____, 20__~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary of State~~

S.B. 1167

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 20, 2002,

by the following vote: 33 Ayes,

25 Nays, 2 Not Voting


Speaker of the House


Chief Clerk of the House

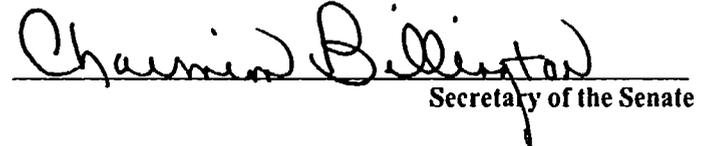
SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 16, 2002,

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting


President of the Senate

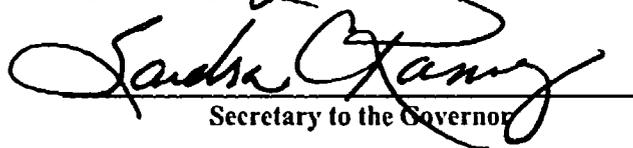

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 21 day of May, 2001,

at 10:21 o'clock A M.


Secretary to the Governor

Approved this 28 day of

May, 2002,

at 10:42 o'clock A M.

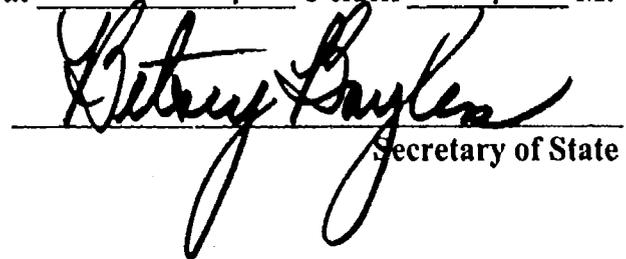

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 29 day of May, 2002,

at 11:19 o'clock A M.


Secretary of State

S.B. 1167