House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 51

HOUSE BILL 2191

AN ACT

AMENDING SECTION 3-604, ARIZONA REVISED STATUTES; REPEALING SECTION 3-666, ARIZONA REVISED STATUTES; AMENDING SECTIONS 36-136, 36-183.02 AND 36-901, ARIZONA REVISED STATUTES; RELATING TO HEALTH INSPECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 3-604, Arizona Revised Statutes, is amended to read:

3-604. Dairy inspectors; duties; powers; local health department officers

A. Special dairy inspectors employed by the department shall supervise, inspect, weigh and test dairy products produced or manufactured for human consumption and shall perform ~~such~~ other duties and possess ~~such~~ other powers as may be prescribed by the associate director authorized by this article.

B. The director may assign personnel ~~from the office of inspections~~ to perform the inspection-related activities prescribed by this chapter under the direction of the associate director.

C. In addition to inspectors employed or assigned under ~~the provisions of~~ this section, the enforcing officers of a ~~city or~~ county health department, COUNTY ENVIRONMENTAL HEALTH DEPARTMENT OR PUBLIC HEALTH SERVICES DISTRICT under the charge and direction of a ~~qualified~~ health officer ~~shall~~ OR ENVIRONMENTAL HEALTH OFFICER MAY be deemed special dairy inspectors in the city or county, and a milk supply inspected and approved by these inspectors shall be deemed to comply with the provisions of this article.

Sec. 2. Repeal

Section 3-666, Arizona Revised Statutes, is repealed.

Sec. 3. Section 36-136, Arizona Revised Statutes, is amended to read:

36-136. Powers and duties of director; compensation of personnel

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 ~~such~~ personnel ~~considered~~ 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 the state.

6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the 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 rest room, 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 the 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 the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which ~~such~~ 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 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.

D. 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.

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 assure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any such 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.

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

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

G. Notwithstanding subsection H, 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 no longer than eighteen months.

H. The director shall, by rule:

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, 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 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 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 assure that all food OR DRINK, including meat and meat products AND MILK AND MILK PRODUCTS sold at the retail level, ~~or drink, other than milk and milk products, sold or distributed~~ 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 such food and drink. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained ~~in any plant, other than a meat packing plant, slaughterhouse or wholesale meat processing plant, and~~ in any warehouse, restaurant or other premises, ~~and in~~ EXCEPT A MEAT PACKING 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.

5. Prescribe reasonably necessary measures to assure 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 assure 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 assure that all ice sold or distributed for human consumption or for the preservation or storage of 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 preparation of 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 such premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.

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 such 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 such 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 such 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 such confidential information 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.

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

J. 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.

K. 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.

L. 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.

Sec. 4. Section 36-183.02, Arizona Revised Statutes, is amended to read:

36-183.02. Sanitary regulations; notice

A. Each county shall~~:~~

~~1.~~ investigate all nuisances, sources of filth and causes of sickness and make regulations necessary for the public health and safety of the inhabitants.

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

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

Sec. 5. Section 36-901, Arizona Revised Statutes, is amended to read:

36-901. Definitions

In this article, unless the context otherwise requires:

1. "Advertisement" means all representations disseminated in any manner or by any means other than by labeling for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food.

2. "Color additive" means a material ~~which~~ THAT both:

(a) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source.

(b) When added or applied to a food is capable, alone or through reaction with other substance, of imparting color ~~thereto~~ TO THAT FOOD,

except that ~~such term~~ COLOR ADDITIVE does not include any material ~~which~~ THAT has been exempted under the federal act. The term "color" includes, but is not limited to, black, white and intermediate grays. This paragraph shall not be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil, and thereby affecting its color, whether before or after harvest.

3. "Contaminated with filth" applies to any food not securely protected from dust, from dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

4. "Director" means the director of the department of health services.

5. "Federal act" means the federal food, drug and cosmetic act, as amended (21 ~~U.S.C.~~ UNITED STATES CODE SECTION 301 et seq.).

6. "Food" or "article" means:

(a) Articles used for food or drink for man or animals~~, except those articles included in title 3, chapters 4 and 5~~.

(b) Chewing gum.

(c) Articles used for components of any such article.

7. "Food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component of or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food, and including any source of radiation intended for any ~~such~~ use if ~~such~~ THE substance is not generally recognized among experts qualified by scientific training and experience to evaluate its safety as having been adequately shown through scientific procedures, or in the case of a substance used in a food prior to January 1, 1958 through either scientific procedures or experience based on common use in food, to be safe under the conditions of its intended use. ~~Such term~~ FOOD ADDITIVE does not include:

(a) A pesticide chemical in or on a raw agricultural commodity.

(b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage or transportation of any raw agricultural commodity.

(c) A color additive.

(d) Any substance used in accordance with a sanction or approval granted pursuant to laws or regulations administered by the federal food and drug administration.

8. "Immediate container" does not include package liners.

9. "Label" or "labeling" means a display of written, printed or graphic matter upon the immediate container or wrapper of an article or accompanying ~~such~~ THAT article.

10. "Perishable food" means any food ~~which~~ THAT may spoil or otherwise become unfit for human consumption because of its nature, type or physical

condition, including fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits and vegetables and foods ~~which~~ THAT have been packaged, refrigerated or frozen.

11. "Pesticide chemical" means any substance ~~which~~ THAT alone, in chemical combination or in formulation with one or more other substances is an "economic poison" within the meaning of the federal insecticide, fungicide and rodenticide act (7 ~~U.S.C.~~ UNITED STATES CODE sections 135-135k) and ~~which~~ THAT is used in the production, storage or transportation of raw agricultural commodities.

12. "Prepared food" means any food commercially processed and prepared for human consumption.

13. "Raw agricultural commodity" means any food in its raw or natural state, including, but not limited to, all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

14. "Special inspection warrant" means an order in writing issued in the name of the state of Arizona, signed by a magistrate and directed to the director or his designee, authorizing him to enter into or upon any public or private property to make an inspection authorized by law.

APPROVED BY THE GOVERNOR APRIL 7, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2004.

Passed the House February 16, 2004,

by the following vote: 45 Ayes,

12 Nays, 3 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 31, 2004,

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

Ken Bennett
President of the Senate

Charmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

1st day of April, 2004,

at 1:40 o'clock P. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 7 day of

April, 2004,

at 10:55 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 7 day of April, 2004,

at 12:18 o'clock P. M.

Janice K. Brewer
Secretary of State

H.B. 2191