

State of Arizona  
Senate  
Fifty-third Legislature  
First Regular Session  
2017

Senate Engrossed  
**FILED**  
**MICHELE REAGAN**  
**SECRETARY OF STATE**

**CHAPTER 108**  
**SENATE BILL 1128**

AN ACT

AMENDING SECTION 36-136, ARIZONA REVISED STATUTES; RELATING TO THE  
DEPARTMENT OF HEALTH SERVICES DIRECTOR'S DUTIES.

(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; definition

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 ~~the~~ THIS state.

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

1 act the director is by law empowered to do or charged with the  
2 responsibility of 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,  
6 efficiently and properly performed by the local health department, county  
7 environmental 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  
10 accept the delegation and agrees to perform or exercise the functions,  
11 powers and duties conferred in accordance with the standards of  
12 performance established by the director OF THE DEPARTMENT OF HEALTH  
13 SERVICES.

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

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

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

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

34 H. The director, by rule, shall:

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

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

1 and the conduct of funerals, relating to and restricted to communicable  
2 diseases and regarding the removal, transportation, cremation, interment  
3 or disinterment of any dead human body.

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

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

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

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

31 (c) Not potentially hazardous and prepared in a kitchen of a  
32 private home for occasional sale or distribution for noncommercial  
33 purposes.

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

37 (e) Offered at a child care facility and limited to commercially  
38 prepackaged food that is not potentially hazardous and whole fruits and  
39 vegetables that are washed and cut ~~on-site~~ ON-SITE for immediate  
40 consumption.

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

43 (g) Baked and confectionary goods that are not potentially  
44 hazardous and that are prepared in a kitchen of a private home for  
45 commercial purposes if packaged with a label that clearly states the

1 address of the maker, includes contact information for the maker, lists  
2 all the ingredients in the product and discloses that the product was  
3 prepared in a home. The label must be given to the final consumer of the  
4 product. If the product was made in a facility for individuals with  
5 developmental disabilities, the label must also disclose that fact. The  
6 person preparing the food or supervising the food preparation must obtain  
7 a food handler's card or certificate if one is issued by the local county  
8 and must register with an online registry established by the department  
9 pursuant to paragraph 13 of this subsection. For the purposes of this  
10 subdivision, "potentially hazardous" means baked and confectionary goods  
11 that meet the requirements of the food code published by the United States  
12 food and drug administration, as modified and incorporated by reference by  
13 the department by rule.

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

16 5. Prescribe reasonably necessary measures to ensure that all meat  
17 and meat products for human consumption handled at the retail level are  
18 delivered in a manner and from sources approved by the Arizona department  
19 of agriculture and are free from unwholesome, poisonous or other foreign  
20 substances and filth, insects or disease-causing organisms. The rules  
21 shall prescribe standards for sanitary facilities to be used in identity,  
22 storage, handling and sale of all meat and meat products sold at the  
23 retail level.

24 6. Prescribe reasonably necessary measures regarding production,  
25 processing, labeling, handling, serving and transportation of bottled  
26 water to ensure that all bottled drinking water distributed for human  
27 consumption is free from unwholesome, poisonous, deleterious or other  
28 foreign substances and filth or disease-causing organisms. The rules  
29 shall prescribe minimum standards for the sanitary facilities and  
30 conditions that shall be maintained at any source of water, bottling plant  
31 and truck or vehicle in which bottled water is produced, processed, stored  
32 or transported and shall provide for inspection and certification of  
33 bottled drinking water sources, plants, processes and transportation and  
34 for abatement as a public nuisance of any water supply, label, premises,  
35 equipment, process or vehicle that does not comply with the minimum  
36 standards. The rules shall prescribe minimum standards for  
37 bacteriological, physical and chemical quality for bottled water and for  
38 the submission of samples at intervals prescribed in the standards.

39 7. Define and prescribe reasonably necessary measures governing ice  
40 production, handling, storing and distribution to ensure that all ice sold  
41 or distributed for human consumption or for the preservation or storage of  
42 food for human consumption is free from unwholesome, poisonous,  
43 deleterious or other foreign substances and filth or disease-causing  
44 organisms. The rules shall prescribe minimum standards for the sanitary  
45 facilities and conditions and the quality of ice that shall be maintained

1 at any ice plant, storage and truck or vehicle in which ice is produced,  
2 stored, handled or transported and shall provide for inspection and  
3 licensing of the premises and vehicles, and for abatement as public  
4 nuisances of ice, premises, equipment, processes or vehicles that do not  
5 comply with the minimum standards.

6 8. Define and prescribe reasonably necessary measures concerning  
7 sewage and excreta disposal, garbage and trash collection, storage and  
8 disposal, and water supply for recreational and summer camps, campgrounds,  
9 motels, tourist courts, trailer coach parks and hotels. The rules shall  
10 prescribe minimum standards for preparation of food in community kitchens,  
11 adequacy of excreta disposal, garbage and trash collection, storage and  
12 disposal and water supply for recreational and summer camps, campgrounds,  
13 motels, tourist courts, trailer coach parks and hotels and shall provide  
14 for inspection of these premises and for abatement as public nuisances of  
15 any premises or facilities that do not comply with the rules. Primitive  
16 camp and picnic grounds offered by this state or a political subdivision  
17 of this state are exempt from rules adopted pursuant to this paragraph but  
18 are subject to approval by a county health department under sanitary  
19 regulations adopted pursuant to section 36-183.02. For the purposes of  
20 this paragraph, "primitive camp and picnic grounds" means camp and picnic  
21 grounds that are remote in nature and without accessibility to public  
22 infrastructure such as water, electricity and sewer.

23 9. Define and prescribe reasonably necessary measures concerning  
24 the sewage and excreta disposal, garbage and trash collection, storage and  
25 disposal, water supply and food preparation of all public schools. The  
26 rules shall prescribe minimum standards for sanitary conditions that shall  
27 be maintained in any public school and shall provide for inspection of  
28 these premises and facilities and for abatement as public nuisances of any  
29 premises that do not comply with the minimum standards.

30 10. Prescribe reasonably necessary measures to prevent pollution of  
31 water used in public or semipublic swimming pools and bathing places and  
32 to prevent deleterious health conditions at these places. The rules shall  
33 prescribe minimum standards for sanitary conditions that shall be  
34 maintained at any public or semipublic swimming pool or bathing place and  
35 shall provide for inspection of these premises and for abatement as public  
36 nuisances of any premises and facilities that do not comply with the  
37 minimum standards. The rules shall be developed in cooperation with the  
38 director of the department of environmental quality and shall be  
39 consistent with the rules adopted by the director of the department of  
40 environmental quality pursuant to section 49-104, subsection B,  
41 paragraph 12.

42 11. Prescribe reasonably necessary measures to keep confidential  
43 information relating to diagnostic findings and treatment of patients, as  
44 well as information relating to contacts, suspects and associates of

1 communicable disease patients. In no event shall confidential information  
2 be made available for political or commercial purposes.

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

7 13. Establish an online registry of food preparers that are  
8 authorized to prepare food for commercial purposes pursuant to paragraph 4  
9 of this subsection.

10 14. PRESCRIBE AN EXCLUSION FOR FETAL DEMISE CASES FROM THE  
11 STANDARDIZED SURVEY KNOWN AS "THE HOSPITAL CONSUMER ASSESSMENT OF  
12 HEALTHCARE PROVIDERS AND SYSTEMS".

13 I. The rules adopted under the authority conferred by this section  
14 shall be observed throughout the state and shall be enforced by each local  
15 board of health or public health services district, but this section does  
16 not limit the right of any local board of health or county board of  
17 supervisors to adopt ordinances and rules as authorized by law within its  
18 jurisdiction, provided that the ordinances and rules do not conflict with  
19 state law and are equal to or more restrictive than the rules of the  
20 director.

21 J. The powers and duties prescribed by this section do not apply in  
22 instances in which regulatory powers and duties relating to public health  
23 are vested by the legislature in any other state board, commission, agency  
24 or instrumentality, except that with regard to the regulation of meat and  
25 meat products, the department of health services and the Arizona  
26 department of agriculture within the area delegated to each shall adopt  
27 rules that are not in conflict.

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

33 L. After consultation with the state superintendent of public  
34 instruction, the director shall prescribe the criteria the department  
35 shall use in deciding whether or not to notify a local school district  
36 that a pupil in the district has tested positive for the human  
37 immunodeficiency virus antibody. The director shall prescribe the  
38 procedure by which the department shall notify a school district if,  
39 pursuant to these criteria, the department determines that notification is  
40 warranted in a particular situation. This procedure shall include a  
41 requirement that before notification the department shall determine to its  
42 satisfaction that the district has an appropriate policy relating to  
43 nondiscrimination of the infected pupil and confidentiality of test  
44 results and that proper educational counseling has been or will be  
45 provided to staff and pupils.

1 M. Until the department adopts exemptions by rule as required by  
2 subsection H, paragraph 4, subdivision (f) of this section, food and drink  
3 are exempt from the rules prescribed in subsection H of this section if  
4 offered at locations that sell only commercially prepackaged food or drink  
5 that is not potentially hazardous, without a limitation on its display  
6 area.

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

12 O. UNTIL THE DEPARTMENT ADOPTS AN EXCLUSION BY RULE AS REQUIRED BY  
13 SUBSECTION H, PARAGRAPH 14 OF THIS SECTION, THE STANDARDIZED SURVEY KNOWN  
14 AS "THE HOSPITAL CONSUMER ASSESSMENT OF HEALTHCARE PROVIDERS AND SYSTEMS"  
15 MAY NOT INCLUDE PATIENTS WHO EXPERIENCE A FETAL DEMISE.

16 P. FOR THE PURPOSES OF THIS SECTION, "FETAL DEMISE" MEANS A FETAL  
17 DEATH THAT OCCURS OR IS CONFIRMED IN A LICENSED HOSPITAL. FETAL DEMISE  
18 DOES NOT INCLUDE AN ABORTION AS DEFINED IN SECTION 36-2151.

**APPROVED BY THE GOVERNOR MARCH 29, 2017.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 29, 2017.**

Passed the House March 23, 2017,

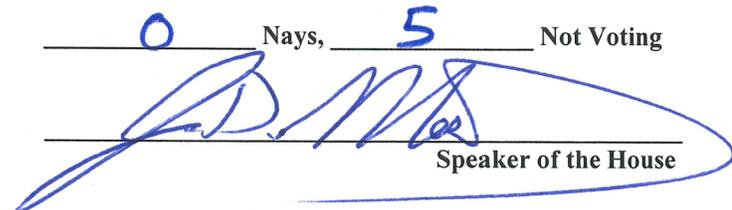
Passed the Senate February 2, 2017,

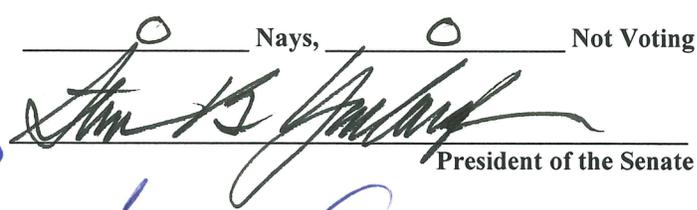
by the following vote: 55 Ayes,

by the following vote: 30 Ayes,

0 Nays, 5 Not Voting

0 Nays, 0 Not Voting

  
Speaker of the House

  
President of the Senate

  
Chief Clerk of the House

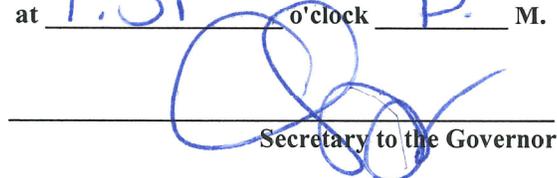
  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

27 day of March, 2017,

at 1:51 o'clock P. M.

  
Secretary to the Governor

Approved this 29<sup>th</sup> day of

March, 2017,

at 2:08 o'clock P. M.

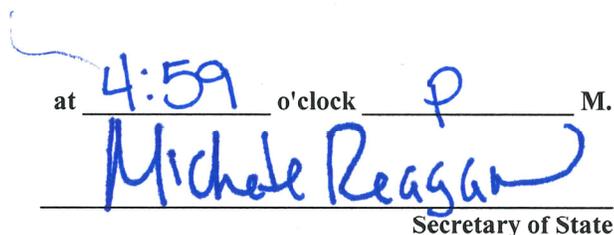
  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 29 day of March, 2017,

at 4:59 o'clock P. M.

  
Secretary of State

S.B. 1128