

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 286
HOUSE BILL 2371

AN ACT

AMENDING TITLE 9, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7.2; AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-269.20; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 15; AMENDING TITLE 41, CHAPTER 3.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-626; AMENDING SECTIONS 42-5074 AND 42-5102, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-6015; RELATING TO BUSINESS REGULATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 9, chapter 4, Arizona Revised Statutes, is amended
3 by adding article 7.2, to read:

4 ARTICLE 7.2. MOBILE FOOD VENDORS AND MOBILE FOOD UNITS

5 9-485. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "MOBILE FOOD UNIT" MEANS A FOOD ESTABLISHMENT THAT IS LICENSED
8 BY THIS STATE, THAT IS READILY MOVABLE AND THAT DISPENSES FOOD OR
9 BEVERAGES FOR IMMEDIATE SERVICE AND CONSUMPTION AND OTHER INCIDENTAL
10 RETAIL ITEMS FROM ANY VEHICLE AS DEFINED IN SECTION 28-101.

11 2. "MOBILE FOOD VENDOR" MEANS ANY PERSON WHO OWNS, CONTROLS,
12 MANAGES OR LEASES A MOBILE FOOD UNIT OR CONTRACTS WITH A PERSON TO PREPARE
13 FOODS AND VEND FROM, DRIVE OR OPERATE A MOBILE FOOD UNIT.

14 9-485.01. Mobile food vendors; mobile food units; operation

15 A. IN RELATION TO A MOBILE FOOD VENDOR OR MOBILE FOOD UNIT, A CITY
16 OR TOWN BY ORDINANCE OR RESOLUTION MAY:

17 1. PROHIBIT OR RESTRICT A MOBILE FOOD VENDOR FROM OPERATING AT A
18 PUBLIC AIRPORT OR PUBLIC TRANSIT FACILITY, IN AN AREA ZONED FOR
19 RESIDENTIAL USE OR WITHIN TWO HUNDRED FIFTY FEET OF AN AREA ZONED FOR
20 RESIDENTIAL USE.

21 2. CONTINUE TO ENACT AND ENFORCE REGULATIONS AND ZONING CODES ON
22 MOBILE FOOD UNITS OR MOBILE FOOD VENDORS THAT ARE NOT OTHERWISE PROHIBITED
23 BY LAW.

24 B. IN RELATION TO A MOBILE FOOD VENDOR OR MOBILE FOOD UNIT, A CITY
25 OR TOWN MAY NOT:

26 1. REQUIRE A MOBILE FOOD VENDOR, PROPERTY OWNER OR LESSEE OF A
27 PROPERTY TO APPLY FOR AND RECEIVE ANY SPECIAL PERMIT THAT IS NOT REQUIRED
28 FOR OTHER TEMPORARY OR MOBILE VENDING BUSINESSES IN THE SAME ZONING
29 DISTRICT.

30 2. REQUIRE A MOBILE FOOD VENDOR OR MOBILE FOOD UNIT TO OPERATE A
31 SPECIFIC DISTANCE FROM THE PERIMETER OF AN EXISTING COMMERCIAL
32 ESTABLISHMENT OR RESTAURANT, EXCEPT AS REQUIRED BY APPLICABLE BUILDING,
33 FIRE, STREET AND SIDEWALK CODES.

34 3. PROHIBIT OR RESTRICT A MOBILE FOOD VENDOR OR MOBILE FOOD UNIT
35 FROM USING ANY LEGAL PARKING SPACE, INCLUDING METERED PARKING, EXCEPT TO
36 RESTRICT THE NUMBER OF SPACES, VEHICLE SIZE AND PARKING DURATION AND THE
37 ABILITY TO OCCUPY SITES WITH INSUFFICIENT PARKING CAPACITY AS PRESCRIBED
38 BY A LOCAL ZONING ORDINANCE OF THE CITY OR TOWN OR AS OTHERWISE PROHIBITED
39 BY FEDERAL LAW.

40 4. REQUIRE A MOBILE FOOD UNIT TO BE INSPECTED BY A CITY OR TOWN
41 FIRE DEPARTMENT BEFORE OPERATION IF THE MOBILE FOOD VENDOR PROVIDES
42 EVIDENCE THAT THE MOBILE FOOD UNIT PASSED A FIRE INSPECTION BY ANOTHER
43 CITY OR TOWN FIRE DEPARTMENT IN THIS STATE WITHIN THE PRECEDING TWELVE
44 MONTHS.

1 C. A CITY OR TOWN WITH A POPULATION OF MORE THAN FIFTY THOUSAND
2 PERSONS SHALL MAKE AVAILABLE ALL APPLICABLE LICENSE APPLICATIONS IN AN
3 ELECTRONIC FORMAT THAT IS AVAILABLE ONLINE AND MAY NOT REQUIRE A MOBILE
4 FOOD VENDOR TO APPLY IN PERSON.

5 9-485.02. Insurance requirement prohibited

6 A CITY OR TOWN MAY NOT REQUIRE A MOBILE FOOD VENDOR TO MAINTAIN AN
7 INSURANCE POLICY THAT NAMES THE CITY OR TOWN AS AN ADDITIONAL INSURED
8 UNLESS THE MOBILE FOOD VENDOR IS ATTENDING AN EVENT SPONSORED BY THAT CITY
9 OR TOWN OR IS OPERATING ON PUBLIC PROPERTY, INCLUDING THE RIGHT-OF-WAY OR
10 PROPERTY OWNED BY THE CITY OR TOWN.

11 Sec. 2. Title 11, chapter 2, article 4, Arizona Revised Statutes,
12 is amended by adding section 11-269.20, to read:

13 11-269.20. Mobile food vendors; mobile food units; operation;
14 insurance requirement prohibited; definitions

15 A. IN RELATION TO A MOBILE FOOD VENDOR OR MOBILE FOOD UNIT, A
16 COUNTY BOARD OF SUPERVISORS BY ORDINANCE OR RESOLUTION MAY:

17 1. IMPOSE OPERATING HOURS ONLY IF THEY ARE THE SAME AS THE
18 OPERATING HOURS IMPOSED ON RESTAURANTS IN THAT COUNTY.

19 2. RESTRICT THE OPERATION OF NOISEMAKING DEVICES DURING SPECIFIC
20 TIMES OF DAY.

21 3. RESTRICT OR PROHIBIT THE OPERATION OF A MOBILE FOOD UNIT IN AN
22 AREA THAT IS ZONED AS RESIDENTIAL ONLY.

23 4. PROHIBIT A MOBILE FOOD UNIT THAT IS OPERATING ON PRIVATE
24 PROPERTY FROM BLOCKING INGRESS TO AND EGRESS FROM THAT PROPERTY.

25 5. PROHIBIT A MOBILE FOOD UNIT FROM BLOCKING OR INHIBITING THE USE
26 OF A PUBLIC SIDEWALK.

27 6. PROHIBIT A MOBILE FOOD VENDOR OR MOBILE FOOD UNIT FROM BLOCKING
28 VEHICULAR TRAFFIC ON PUBLIC STREETS AND ROADS.

29 7. REQUIRE A MOBILE FOOD VENDOR TO OBTAIN CONSENT FROM A PRIVATE
30 PROPERTY OWNER OR LESSEE OR THE OWNER'S OR LESSEE'S AGENT BEFORE BEGINNING
31 OPERATION ON THAT PROPERTY.

32 8. PROHIBIT OR RESTRICT A MOBILE FOOD VENDOR FROM OPERATING AT A
33 PUBLIC AIRPORT.

34 9. REQUIRE A MOBILE FOOD VENDOR WITH A STATE LICENSE THAT IS NOT
35 ISSUED BY THAT COUNTY TO APPLY FOR A PERMIT IN ORDER TO CONDUCT BUSINESS
36 WITHIN THE COUNTY. THE COUNTY MAY CHARGE A FEE FOR THE PERMIT. THE
37 PERMIT SHALL BE MADE AVAILABLE IN AN ELECTRONIC FORMAT THAT IS AVAILABLE
38 ONLINE. THE ORDINANCE OR RESOLUTION MAY NOT REQUIRE A MOBILE FOOD VENDOR
39 WITH A STATE LICENSE TO BE INSPECTED AS A CONDITION OF RECEIVING THE
40 PERMIT.

41 10. PROHIBIT OR RESTRICT A MOBILE FOOD VENDOR FROM OPERATING AT A
42 COUNTY PUBLIC PARK.

43 B. IN RELATION TO A MOBILE FOOD VENDOR OR MOBILE FOOD UNIT, A
44 COUNTY BOARD OF SUPERVISORS MAY NOT:

ARTICLE 2. LICENSURE AND REGULATION

36-1761. Mobile food vendors; mobile food units; rules; health and safety licensing standards

A. THE DIRECTOR SHALL ADOPT RULES THAT DO ALL OF THE FOLLOWING:

1. ESTABLISH HEALTH AND SAFETY LICENSING STANDARDS FOR MOBILE FOOD VENDORS AND MOBILE FOOD UNITS THAT APPLY ON A STATEWIDE BASIS. THE LICENSING STANDARDS SHALL:

(a) INCLUDE THREE CATEGORIES OF MOBILE FOOD UNITS THAT ARE BASED ON THE TYPE OF FOOD DISPENSED AND THE AMOUNT OF HANDLING AND PREPARATION REQUIRED.

(b) INCLUDE GENERAL PHYSICAL AND OPERATION REQUIREMENTS OF A MOBILE FOOD UNIT, INCLUDING:

(i) INSTALLATION OF COMPRESSORS, GENERATORS AND SIMILAR MECHANICAL UNITS THAT ARE NOT AN INTEGRAL PART OF THE FOOD PREPARATION OR STORAGE EQUIPMENT.

(ii) NECESSARY COMMISSARY OR OTHER SERVICING AREA AGREEMENTS.

(iii) VEHICLE AND EQUIPMENT CLEANING REQUIREMENTS.

(iv) WASTE DISPOSAL REQUIREMENTS DURING AND AFTER OPERATION ON PUBLIC OR PRIVATE PROPERTY, WHICH MAY NOT INCLUDE THE SIZE OR DIMENSIONS OF ANY REQUIRED SOLID WASTE RECEPTACLE.

2. ESTABLISH STATEWIDE INSPECTION STANDARDS THAT ARE BASED ON OBJECTIVE FACTORS FOR USE BY THE COUNTY HEALTH DEPARTMENTS.

3. ESTABLISH A LICENSING PROCESS FOR MOBILE FOOD UNITS THAT DOES ALL OF THE FOLLOWING:

(a) REQUIRES A SEPARATE LICENSE FOR EACH MOBILE FOOD UNIT.

(b) REQUIRES A LICENSE TO BE RENEWED ANNUALLY.

(c) DELEGATES TO THE COUNTY HEALTH DEPARTMENT IN THE COUNTY WHERE THE MOBILE FOOD VENDOR'S COMMISSARY IS LOCATED THE LICENSING AND HEALTH AND SAFETY INSPECTION FOR STATE LICENSURE USING THE STATEWIDE INSPECTION STANDARDS ADOPTED PURSUANT TO THIS SECTION. THE LICENSING PROCESS SHALL REQUIRE RANDOM INSPECTIONS BY COUNTY HEALTH DEPARTMENTS AT NO ADDITIONAL COST EXCEPT AS PROVIDED IN SECTION 11-269.20. A MOBILE FOOD UNIT LICENSE ISSUED BY A COUNTY HEALTH DEPARTMENT PURSUANT TO THIS SECTION SHALL HAVE RECIPROCITY IN EACH COUNTY OF THIS STATE. A COUNTY HEALTH DEPARTMENT MAY ENFORCE THE STATEWIDE INSPECTION STANDARDS REGARDLESS OF WHERE THE LICENSE WAS ISSUED.

(d) REQUIRES ALL EMPLOYEES OF A MOBILE FOOD VENDOR TO HAVE A VALID FOOD HANDLER CARD OR A CERTIFICATE FROM AN ACCREDITED FOOD HANDLER TRAINING CLASS AS SPECIFIED IN RULE BY THE DEPARTMENT.

(e) REQUIRES THAT THE LICENSE BE DISPLAYED IN THE MOBILE FOOD VENDOR'S OPERATING LOCATION IN A CONSPICUOUS LOCATION FOR PUBLIC VIEW.

B. THE RULES ADOPTED PURSUANT TO THIS SECTION MAY NOT DO EITHER OF THE FOLLOWING:

1 regularly engage or continue in the restaurant business for the purpose of
2 fund-raising.

3 4. Sales by a nonprofit organization that is exempt from taxation
4 under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue
5 code if the organization is associated with a major league baseball team
6 or a national touring professional golfing association and no part of the
7 organization's net earnings inures to the benefit of any private
8 shareholder or individual.

9 5. Sales at a rodeo featuring primarily farm and ranch animals in
10 this state by a nonprofit organization that is exempt from taxation under
11 section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the
12 internal revenue code ~~and~~ IF no part of the organization's net earnings
13 inures to the benefit of any private shareholder or individual.

14 6. Sales by any nonprofit organization organized and operated
15 exclusively for charitable purposes and recognized by the United States
16 internal revenue service under section 501(c)(3) of the internal revenue
17 code.

18 7. Sales to qualifying hospitals as defined in section 42-5001.

19 8. Sales to a qualifying health care organization as defined in
20 section 42-5001 if the tangible personal property is used by the
21 organization solely to provide health and medical related educational and
22 charitable services.

23 9. Sales of food, drink and condiment for consumption within the
24 premises of any prison, jail or other institution under the jurisdiction
25 of the state department of corrections, the department of public safety,
26 the department of juvenile corrections or a county sheriff.

27 10. Sales of articles of prepared or unprepared food, drink or
28 condiment and accessory tangible personal property to a school district or
29 charter school if the articles and accessory tangible personal property
30 are served to persons for consumption on the premises of a public school
31 in the school district or charter school during school hours.

32 11. Prepared food, drink or condiment donated by a restaurant to a
33 nonprofit charitable organization that has qualified under section
34 501(c)(3) of the internal revenue code and that regularly serves meals to
35 the needy and indigent on a continuing basis at no cost.

36 12. Sales of articles of food and drink at low or reduced prices to
37 eligible elderly, ~~disabled~~ or homeless persons OR PERSONS WITH A
38 DISABILITY by a restaurant that contracts with the department of economic
39 security and that is approved by the food and nutrition services of the
40 United States department of agriculture pursuant to the supplemental
41 nutrition assistance program established by the food and nutrition act of
42 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011
43 through 2036a), if the purchases of the articles of food and drink are
44 made with the benefits issued pursuant to the supplemental nutrition
45 assistance program.

1 C. The tax imposed on the restaurant classification pursuant to
2 this section does not apply to the gross proceeds of sales or gross income
3 from tangible personal property sold to a commercial airline consisting of
4 food, beverages and condiments and accessories used for serving the food
5 and beverages, if those items are to be provided without additional charge
6 to passengers for consumption in flight. For the purposes of this
7 subsection, "commercial airline" means a person holding a federal
8 certificate of public convenience and necessity or foreign air carrier
9 permit for air transportation to transport persons, property or United
10 States mail in intrastate, interstate or foreign commerce.

11 D. The department shall separately account for revenues collected
12 under the restaurant classification for the purposes of section 42-5029,
13 subsection D, paragraph 4, subdivision (b).

14 E. For THE purposes of section 42-5032.01, the department shall
15 separately account for revenues collected under the restaurant
16 classification from businesses operating restaurants, dining rooms,
17 lunchrooms, lunch stands, soda fountains, catering services or similar
18 establishments:

19 1. On the premises of a multipurpose facility that is owned or
20 operated by the tourism and sports authority pursuant to title 5, chapter
21 8 for consumption on or off the premises.

22 2. At professional football contests that are held in a stadium
23 located on the campus of an institution under the jurisdiction of the
24 Arizona board of regents.

25 Sec. 6. Section 42-5102, Arizona Revised Statutes, is amended to
26 read:

27 42-5102. Tax exemption for sales of food; nonexempt sales

28 A. Except for the gross proceeds of sales or gross income from the
29 sale of food for consumption on the premises, the taxes imposed by this
30 chapter do not apply to the gross proceeds of sales or gross income from
31 sales of food by any of the following:

32 1. A retailer who conducts an eligible grocery business.

33 2. A retailer who conducts a business whose primary business is not
34 the sale of food but who sells food which is displayed, packaged and sold
35 in a similar manner as an eligible grocery business.

36 3. A retailer who sells food and does not provide or make available
37 any facilities for the consumption of food on the premises.

38 4. A retailer who conducts a delicatessen business either from a
39 counter which is separate from the place and cash register where taxable
40 sales are made or from a counter which has two cash registers which are
41 used to record taxable and tax exempt sales or a retailer who conducts a
42 delicatessen business and who uses a cash register which has at least two
43 tax computing keys which are used to record taxable and tax exempt sales.

44 5. A retailer who is a street or sidewalk vendor and who uses a
45 pushcart, ~~mobile facility, motor vehicle or other such conveyance.~~

1 6. Vending machines and other types of automatic retailers.

2 B. The taxes imposed by this chapter do not apply to the gross
3 proceeds of sales or gross income from sales of food by a state university
4 or community college or its designee on its campuses to students using a
5 validated meal ticket or to patients purchasing or consuming food at the
6 Arizona health sciences center.

7 C. The taxes imposed by this chapter do not apply to the gross
8 proceeds of sales or gross income from sales of food by a retailer to:

9 1. A regularly organized private or parochial school that offers an
10 educational program for grade twelve or under which may be attended in
11 substitution for a public school pursuant to section 15-802.

12 2. A child care facility that is licensed under section 36-882 or a
13 child care group home certified under section 36-897.01.

14 3. A facility which provides on a regular basis care and
15 supervision of persons who, because of age or a mental or physical
16 condition, are incapable of caring for themselves and where they are
17 unaccompanied by their custodians or guardians for periods of less than
18 twenty-four hours a day.

19 4. An organization which is tax exempt under section 501(c)(3) of
20 the internal revenue code and which provides the articles to persons with
21 a nominal charge or without a monetary charge.

22 5. A prison, jail or other institution under the jurisdiction of
23 the state department of corrections, the department of public safety, the
24 department of juvenile corrections or a county sheriff for consumption on
25 the premises.

26 D. Notwithstanding subsection A of this section, the taxes imposed
27 by this chapter do not apply to the gross proceeds of sales or gross
28 income from sales of low or reduced cost articles of food or drink to
29 eligible elderly, ~~disabled~~ or homeless persons **OR PERSONS WITH A**
30 **DISABILITY** by a business subject to tax under section 42-5074 that
31 contracts with the department of economic security and that is approved by
32 the food and nutrition service of the United States department of
33 agriculture pursuant to the supplemental nutrition assistance program
34 established by the food and nutrition act of 2008 (P.L. 110-246; 122 Stat.
35 1651; 7 United States Code sections 2011 through 2036a), if the purchases
36 are made with the benefits issued pursuant to the supplemental nutrition
37 assistance program.

38 Sec. 7. Title 42, chapter 6, article 1, Arizona Revised Statutes,
39 is amended by adding section 42-6015, to read:

40 42-6015. Mobile food vendors: definitions

41 A. A CITY, TOWN OR OTHER TAXING JURISDICTION MAY LEVY A TRANSACTION
42 PRIVILEGE, SALES, USE, FRANCHISE OR OTHER SIMILAR TAX OR FEE AS PROVIDED
43 BY THE MODEL CITY TAX CODE ON A PERSON ENGAGING IN BUSINESS AS A MOBILE
44 FOOD VENDOR SUBJECT TO THE RESTAURANT CLASSIFICATION PURSUANT TO SECTION
45 42-5074 FOR SALES OF FOOD OR BEVERAGES FOR IMMEDIATE SERVICE AND

1 CONSUMPTION AND THE RETAIL CLASSIFICATION PURSUANT TO SECTION 42-5061 FOR
2 SALES OF INCIDENTAL RETAIL ITEMS IF THE ADOPTED TAX:

3 1. APPLIES ONLY WITH RESPECT TO TRANSACTIONS THAT OCCUR WITHIN THE
4 JURISDICTIONAL BOUNDARIES OF THE CITY, TOWN OR TAXING JURISDICTION.

5 2. IS ADMINISTERED IN A MANNER THAT IS CONSISTENT WITH THE
6 TREATMENT OF RESTAURANTS OR SIMILAR ESTABLISHMENTS WHERE FOOD OR BEVERAGES
7 ARE PREPARED AND SERVED FOR CONSUMPTION ON OR OFF THE PREMISES.

8 3. IS ADMINISTERED, COLLECTED AND ENFORCED BY THE DEPARTMENT AND
9 REMITTED TO THE CITY, TOWN OR OTHER TAXING JURISDICTION IN A UNIFORM
10 MANNER.

11 B. THE TAXPAYER SHALL MAINTAIN RECORDS THAT SHOW SEPARATELY THE
12 TAXABLE RECEIPTS FROM TRANSACTIONS IN THE RESPECTIVE CITIES, TOWNS OR
13 OTHER TAXING JURISDICTIONS IN WHICH THE TAXPAYER CONDUCTS BUSINESS. IF
14 THE TAXPAYER FAILS TO COMPLY WITH THIS SUBSECTION, THE DEPARTMENT SHALL
15 COLLECT THE TAX BASED ON THE TAXPAYER'S TOTAL RECEIPTS, APPLYING THE
16 HIGHEST TAX RATE LEVIED BY ANY CITY, TOWN OR OTHER TAXING JURISDICTION.

17 C. FOR THE PURPOSES OF THIS SECTION:

18 1. "MOBILE FOOD UNIT" MEANS A FOOD ESTABLISHMENT THAT IS LICENSED
19 BY THIS STATE, THAT IS READILY MOVABLE AND THAT DISPENSES FOOD OR
20 BEVERAGES FOR IMMEDIATE SERVICE AND CONSUMPTION AND OTHER INCIDENTAL
21 RETAIL ITEMS FROM ANY VEHICLE AS DEFINED IN SECTION 28-101.

22 2. "MOBILE FOOD VENDOR" MEANS ANY PERSON WHO OWNS, CONTROLS,
23 MANAGES OR LEASES A MOBILE FOOD UNIT OR CONTRACTS WITH A PERSON TO PREPARE
24 FOODS AND VEND FROM, DRIVE OR OPERATE A MOBILE FOOD UNIT.

25 Sec. 8. Rulemaking; exemption

26 For the purposes of title 36, chapter 15, Arizona Revised Statutes,
27 as added by this act, the department of health services is exempt from the
28 rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes,
29 for one year after the effective date of this act.

APPROVED BY THE GOVERNOR MAY 14, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 14, 2018.