

# Legal Preparedness for Zika Virus: Law as a Tool to Protect Public Health

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ARIZONA  
2016  
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SUMMIT



Arizona Zika Action Plan Summit

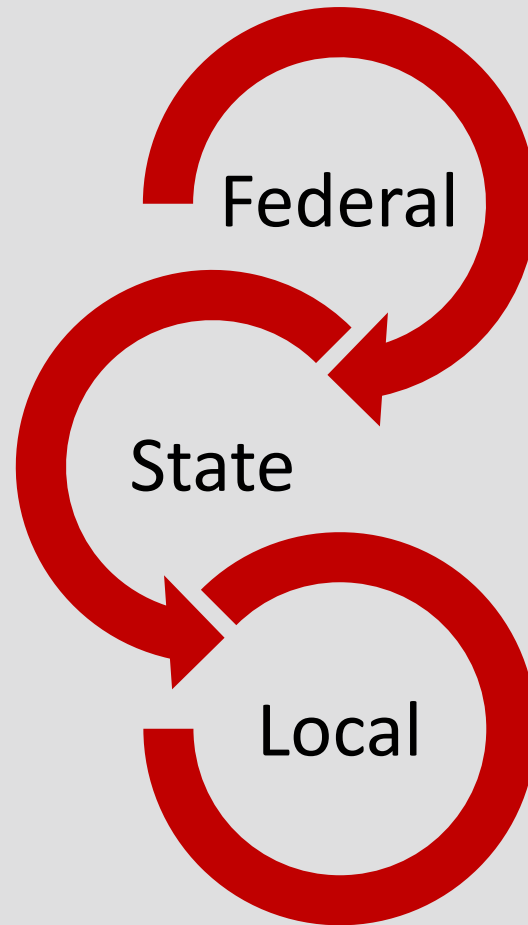
May 24, 2016

# Disclaimer

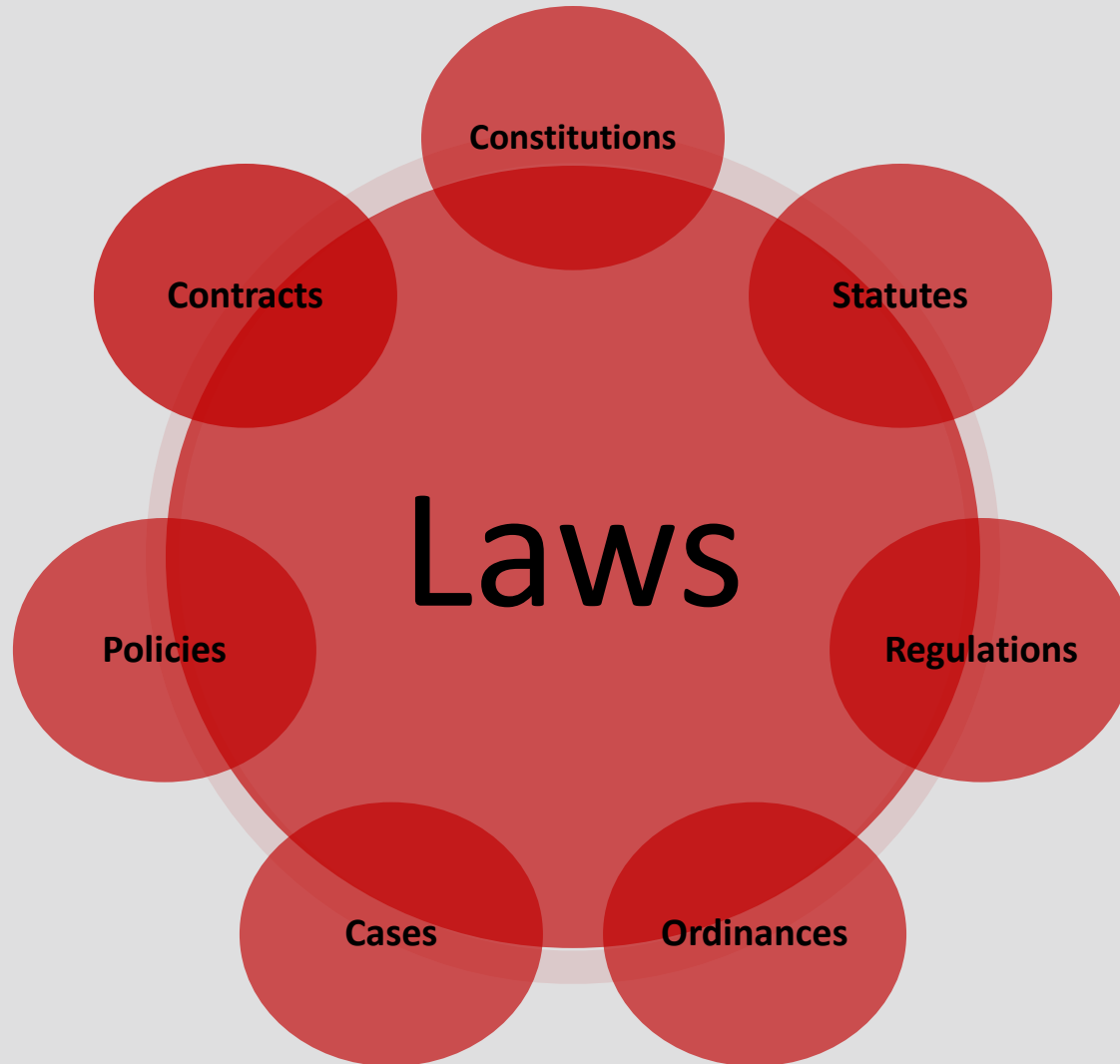
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# Types of Laws



# Types of Laws



# State Police Powers

- Inherent, sovereign power to limit private rights for the benefit of the common good
- Means to establish civil self-protection laws
- Long-standing, well-settled principle of law



# State Police Powers

- Promote the public health, safety, morals, and the general well-being of the community
- Control, regulate, or prohibit non-criminal behavior
- Must respect individual rights

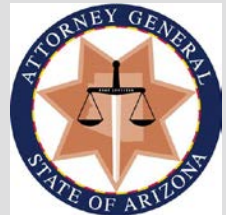


# Mosquito Abatement Related Laws

## State Statutes (ADHS)

### A.R.S. § 36-136: ADHS Director's Powers & Duties

- Provide for the examination of any premises
  - Reasonable cause to believe there is a violation of any health law or rule
- May delegate any functions powers or duties to local health departments, county environmental departments, or public health services districts
  - Believes they can be competently, efficiently, and properly performed



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# Mosquito Abatement Related Laws

## State Statutes (ADHS)

### A.R.S. § 36-601: Dangerous Public Health Nuisances

- Any condition or place in populous areas that constitutes a breeding place for mosquitoes
  - ADHS Director may issue a cease and desist order
    - Reasonable cause to believe person is maintaining a nuisance or engaging in any practice contrary to health laws

### See also

A.R.S. § 49-141: Environmental Nuisances (ADEQ)

A.R.S. § 49-142: Abatement Order(ADEQ)



# Cease and Desist Order Issued

Served by certified mail.

Requires person to promptly cease and desist their action.

15  
days

# Person May Request Hearing

ASAP

# Administrative Hearing

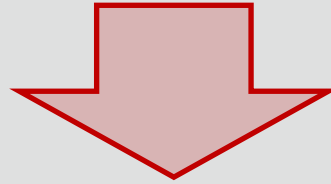
Director determines the order is reasonable and just and the practice engaged in is contrary to health laws

# Order to Comply



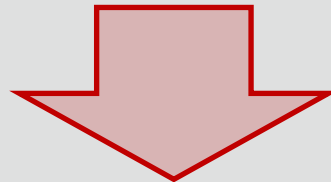
## **Person Refuses to Comply**

Either with cease and desist order without requesting a hearing or with the order to comply after the hearing.



## **Director Files Injunctive Action**

Brings action in superior court to enjoin the person from engage in further acts that are contrary to health laws.



## **Superior Court Hearing**

Superior court proceeds as in other actions for injunctions.



# Mosquito Abatement Related Laws

## State Statutes (Local)

### **A.R.S. § 36-183.02:** Sanitary Regulations

- Each county shall investigate all nuisances, sources of filth, and causes of sickness and make regulations necessary for the public health and safety of the inhabitants

### **A.R.S. § 36-186:** ADHS Director's Powers & Duties

- The director of the county health department shall enforce any law or ordinance enacted or adopted by the respective jurisdiction relating to public health



# Mosquito Abatement Related Laws

## State Statutes (Local)

### A.R.S. § 36-136: ADHS Director's Powers & Duties

- Instructions to local authorities
  - Directs each local board of health or public health services district to enforce all rules adopted in accordance with the statute
  - Authorizes any local board of health or county board of supervisors to adopt ordinances and rules that do not conflict with state law and are equal or more restrictive



# Mosquito Abatement Related Laws

## State Statutes (Local)

### A.R.S. § 36-602: Abatement of Nuisances

- Authorizes the county board of health, the local health department, or the public health service district to order removal within 24 hours
  - When a nuisance, source of filth, or cause of sickness **exists** on private property
- May issue a civil penalty for noncompliance
- Shall cause the nuisance, source of filth, or cause of sickness to be removed at person's expense



# Mosquito Abatement Related Laws

## State Statutes (Local)

### **A.R.S. § 36-602: Abatement of Nuisances**

- Service of order to remove nuisance
  - Delivered to the owner or occupant personally,
  - Left at owner or occupant's usual place of abode, or
  - Served on owner or occupant as provided for in Arizona Rules of Civil Procedure

### **See also**

**A.R.S. § 49-141: Environmental Nuisances (ADEQ)**

**A.R.S. § 49-142: Abatement Order(ADEQ)**



# Mosquito Abatement Related Laws

## State Statutes (Local)

### A.R.S. § 36-603: Right to Enter Premises for Inspection or Abatement

- Any member of a county board of health or a local health department may obtain a warrant from a justice of the peace to destroy, remove or prevent a nuisance, source of filth, or cause of sickness
  - County board of health or a local health department deems it necessary to enter a building or structure within its jurisdiction
  - Is refused entrance for the purpose of examining, destroying, removing or preventing a nuisance, source of filth, or cause of sickness





# Mosquito Abatement Related Laws

## State Statutes (Local)

### A.R.S. § 36-183.03: Unsanitary Premises; Violations

- A person who violates a published order or regulation of a county
- A person who maintains an unsanitary premises and refuses or fails to comply with order to place premises in a sanitary condition within 3 days
  - Guilty of a class 3 misdemeanor
  - Order from director of local health department, county environmental department, or public health services district (“Local Director”)



# Mosquito Abatement Related Laws

## State Statutes (Local)

### A.R.S. § 36-183.04: Notice of Violation

- Local Director may issue a notice of violation and demand for compliance
  - Reason to believe that a person has violated the statute or a sanitary ordinance or regulation



# Notice of Violation and Demand for Compliance Issued

Served by registered or certified mail or by hand delivery.

Local Director has reason to believe person has violated sanitary law.

Must state with reasonable specificity the nature of the violation and the deadline for compliance.

15  
days

**Person May Request Hearing**

**Administrative Hearing**

Hearing officer shall either issue or deny a compliance order.

Makes a finding regarding a civil penalty.

15  
days

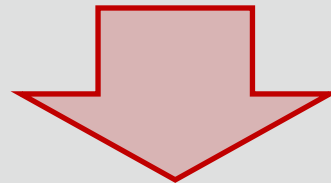


## **Person May Appeal to the Local Director**

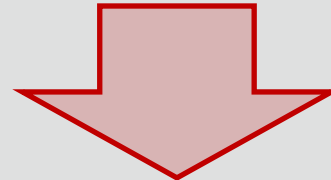
Local Director may affirm, modify, or vacate the hearing officer's decision.



## **Person May Request Judicial Review of Local Director's Decision**



## **Briefing and Argument**



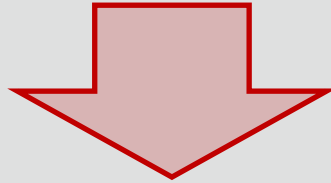
## **Order to Comply**

Judge may affirm, modify, or vacate the Local Director's decision.

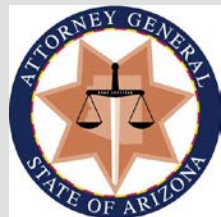




CDC/James Gathany



CDC/James Stewart



# Mosquito Abatement Related Laws

## State Statutes (Local)

### A.R.S. § 36-183.05: Violations; Injunctive Relief

- Local Director may file an action in superior court:
  - For a temporary restraining order, injunction, and other appropriate relief to enjoin person and protect public health
  - To compel compliance with a nuisance abatement order or a compliance order
  - Civil penalties up to \$1,000/day, no more than \$10,000/violation



# Mosquito Abatement Related Laws

## State Statutes (ADHS)

### A.R.S. § 36-136: ADHS Director's Powers & Duties

- Director may define and prescribe emergency measures for detecting, reporting, preventing, and controlling communicable or infectious diseases or conditions
  - Reasonable cause to believe that a serious threat to public health and welfare exists



# Using Law As a Tool

- Voluntary Compliance
  - Consent Decree
  - Compromise
- Collaboration
  - Delegation
  - Agreements
- Interpretation
  - Understand the end goal
  - Read sections together





# Confidentiality of Communicable Disease Information

## A.R.S. § 36-664: Confidentiality; Exceptions

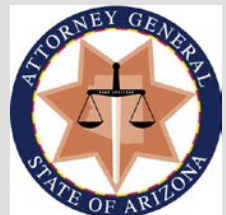
- A person who obtains communicable disease related information shall not disclose that information
  - Exceptions
    - A federal, state, or local agency authorized by law to receive the information
    - A person to which disclosure is ordered by a court



# Confidentiality of Communicable Disease Information

## A.R.S. § 36-664: Confidentiality; Exceptions

- A state, county, or local health department or officer may disclose communicable disease related information if the disclosure is:
  - Specifically authorized or required by federal or state law
- A person to whom communicable disease related information is disclosed pursuant to this section shall not disclose the information to another person



# Confidentiality of Communicable Disease Information

## A.R.S. § 36-665: Confidentiality; Exceptions

- An order for disclosure of communicable disease related information may be issued on an application showing any one of the following:
  - If the application is filed by a state, county, or local health officer, a clear and imminent danger to the public health
  - A clear and imminent danger to a person or to public health or a compelling need requiring disclosure of the information



# Confidentiality of Communicable Disease Information

## A.R.S. § 36-665: Confidentiality; Exceptions

- The court may grant an order without notice and an opportunity to be heard if an ex parte application by a public health officer shows that a clear and imminent danger to a person whose life or health may unknowingly be at risk requires an immediate order and that notice to the individual about whom the information is sought is not reasonable under the circumstances



# Confidentiality of Communicable Disease Information

## A.R.S. § 36-782: Enhanced Surveillance Advisory

- The governor, in consultation with the director, may issue an enhanced surveillance advisory if an illness, health condition or clinical syndrome caused by epidemic or pandemic disease has or may occur
- After considering the least restrictive measures necessary that are consistent with public health and safety, the enhanced surveillance advisory shall direct the following:
  - Patient tracking
  - Information sharing
  - Specimen testing coordination



# Emergency Declarations

## A.R.S. § 26-301: State of Emergency

- Duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons or property within the state caused by
  - Air pollution
  - Storm
  - Earthquake
  - Fire
  - Epidemic
  - Other causes
  - Flood or floodwater
  - Riot
- Beyond the control of any single county, city or town
- Require the combined efforts of the state and the political subdivision



# Emergency Declarations

## A.R.S. § 36-787: Public Health Emergency

- Declared emergency
- Occurrence or imminent threat of an illness or health condition that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability
  - Bioterrorism
  - Epidemic/pandemic disease
  - Biological toxin
  - Highly fatal infectious agent
- ADHS coordinates all matters pertaining to a public health emergency



# Emergency Powers

## A.R.S. § 36-787: Public Health Emergency Powers

- Public health emergency with occurrence or imminent threat of a highly contagious and highly fatal disease
  - Governor, in consultation with ADHS Director, may:
    - Mandate treatment or vaccination of persons who are diagnosed with illness resulting from exposure or who are reasonably believed to have been exposed or who may reasonably be expected to be exposed





# Emergency Declarations

## A.R.S. § 26-301: Local Emergency

- The existence of conditions of disaster or of extreme peril to the safety of persons or property within the territorial limits of a county, city or town
- Conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of such political subdivision as determined by its governing body
- Require the combined efforts of other political subdivisions



# Emergency Powers

## A.R.S. § 36-787: Local Emergency Powers

- Mayor or Chairman of the of the Board of Supervisors may govern by proclamation and has authority to impose all necessary regulations to preserve the peace and order, including but not limited to:
  - Imposing curfews
  - Ordering businesses to close
  - Closing public access to any public building, street, or public place
  - Asking law enforcement for assistance



# Zika Emergency Declarations

- **February 1, 2016: World Health Organization**
  - Zika virus declared a Public Health Emergency of International Concern
- **February 26, 2016: Health and Human Services**
  - Secretary Sylvia Burwell determined there is a significant potential for a public health emergency that affects, or has significant potential to affect, national security or the health and security of U.S. citizens
    - FDA has issued multiple emergency use authorizations (EUAs) and other actions have been taken

Source: James G. Hodge, Jr., J.D., L.L.M., Emergency Legal Preparedness Concerning Zika Virus: A Primer (May 20, 2016)



# Zika Emergency Declarations

- **February 3, 2016: Florida**
  - Gov. Rick Scott issues Exec. Order 16-29
    - Authorizes public health emergency declaration in all counties with cases of Zika
- **February 5, 2016: Puerto Rico**
  - Gov. Alejandro Garcia Padilla declares territorial-wide public health emergency
- **February 12, 2016: Hawaii**
  - Gov. David Ige declares state of emergency for Dengue fever and related mosquito-borne conditions, including Zika virus

Source: James G. Hodge, Jr., J.D., L.L.M., Emergency Legal Preparedness Concerning Zika Virus: A Primer (May 20, 2016)



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# Thank You

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