

ARIZONA REVISED STATUTES

Title 45 - Waters

Chapter 1 – Administration and General Provisions

Article 12 - Water Conservation Plumbing Requirements

45-311. Definitions

In this article, unless the context otherwise requires:

1. "Commercial, industrial and public construction" means buildings used for commercial, industrial or public purposes, including restaurants, bars, nightclubs, public buildings, comfort stations, schools, gymnasias, factories, offices, athletic clubs, hotels and motels.

2. "Person" means an individual, public or private corporation, company, partnership, firm, association, society, estate or trust, any other private organization or enterprise, the United States, any state, territory or country or a governmental entity, political subdivision or municipal corporation organized under or subject to the constitution and laws of this state.

3. "Plumbing fixture" means a lavatory faucet, lavatory faucet replacement aerator, kitchen faucet, kitchen faucet replacement aerator, shower head, urinal, water closet, evaporative cooler or decorative fountain. Plumbing fixture does not include parts necessary for routine maintenance.

4. "PSI" means pounds per square inch of water pressure.

5. "Residential construction" or "residential dwelling" means buildings used for temporary or permanent human habitation, including single family residences and accessory guest houses, multi-family dwellings, townhouses, condominiums, apartments, the sleeping quarters of hotels and motels, dormitories and group housing units.

6. "Urinal" means a fixture that consists of a water flushed bowl, and any associated flush valve, and that is used for the disposal of human urine.

7. "Water closet" means a fixture that consists of a water flushed bowl, and any associated flush valve, and that is used for the disposal of all wastes from the human body.

8. "Water free urinal" means a plumbing fixture that does not require a water supply or flushing device to receive and convey only liquid waste through a trap seal and into the gravity drainage system for such function and that meets the requirements of the American society of mechanical engineers (ASME) standard A112.19.2M-95 or the American national standards institute (ANSI) standard Z124.9-94 or any equivalent standard.

45-312. Prohibited plumbing fixtures; residential construction

Except as provided in sections 45-315 and 45-319, beginning January 1, 1994, no person may distribute, sell, offer for sale, import or install any plumbing fixture for use in this state in any new residential construction or for replacing plumbing fixtures in existing residential construction, unless the fixtures meet the following water saving performance standards:

1. Lavatory faucets and replacement aerators shall be designed to deliver no more than an average of three gallons of water per minute at a pressure of eighty PSI or shall be equipped with permanent flow control devices that allow delivery of no more than an average of three gallons of water per minute at a pressure of eighty PSI.

2. Kitchen faucets and replacement aerators shall be designed to deliver no more than an average of three gallons of water per minute at a pressure of eighty PSI or shall be equipped with permanent flow control devices that allow delivery of no more than an average of three gallons of water per minute at a pressure of eighty PSI.

3. Shower heads shall be designed to deliver no more than an average of three gallons of water per minute at a pressure of eighty PSI.

4. Water closets shall be designed to use no more than an average of one and six-tenths gallons of water per flush.

5. Urinals shall be designed to use no more than an average of one gallon of water per flush. No urinals may be installed that use a timing device to flush periodically regardless of demand.

6. Evaporative cooling systems and decorative fountains shall be equipped with water recycling or reuse systems.

45-313. Prohibited plumbing fixtures: commercial, industrial and public construction

Except as provided in sections 45-315 and 45-319, beginning January 1, 1994, no person may distribute, sell, offer for sale, import or install any plumbing fixtures for use in this state in any new commercial, industrial or public construction or for replacing plumbing fixtures in existing commercial, industrial or public construction, unless the fixtures meet the following water saving performance standards:

1. Lavatory faucets shall be equipped with a mechanism that causes the faucet to close automatically after delivering no more than one-fourth gallon of water or shall be designed to deliver no more than an average of one-half gallon of water per minute at a pressure of eighty PSI.

2. Shower heads shall be designed to deliver no more than an average of three gallons of water per minute at a pressure of eighty PSI.

3. Water closets shall be designed to use no more than an average of one and six-tenths gallons of water per flush.

4. Urinals shall be designed to use no more than an average of one gallon of water per flush. No urinals may be installed that use a timing device to flush periodically regardless of demand.

5. Evaporative cooling systems and decorative fountains shall be equipped with water recycling or reuse systems.

45-313.01. Water free urinals: state buildings

Every effort shall be made to install water free urinals in all new state buildings constructed after the effective date of this section that constitute capital projects as defined in section 41-790 and to install water free urinals in existing state buildings. The director of the department of administration shall endeavor to install as many water free urinals in as many state buildings as possible if the director determines that, given all of the circumstances, their use is in the best interest of this state.

45-314. Labeling fixtures: violation

A. Before sale by any person who manufactures or distributes to a wholesaler or retailer any plumbing fixture for use in this state, each plumbing fixture that meets the requirements of this article shall be marked with labels, on both box and product, that certify that the fixture complies with this article.

B. The labels required by this section may be removable, but if a building or plumbing permit is required, the labels shall not be removed from the fixtures to which they are attached until the fixtures have been installed and inspected by the local authority having building or plumbing code inspection responsibility for the locality in which the fixtures have been installed.

C. A failure to label a fixture pursuant to this section, or any false or inaccurate labeling of a fixture, constitutes a separate violation of this article in addition to any violation of the prohibition against nonconforming fixtures in sections 45-312 and 45-313.

45-315. Waiver of requirements: unavailability; health or safety requirements

A. If a water conserving plumbing fixture required by this article is unavailable from any reasonable source for a period of more than thirty days, the developer, builder or contractor of a new building or of a modification or addition to an existing building may apply for a waiver of the requirements of this article. The application for a waiver shall be in writing, shall contain sufficient documentation to support the claim that the device will not be available for a period of more than thirty days and shall be delivered to the director, either personally or by certified mail. The director may request additional information in order to determine if the application for waiver is valid.

B. Within three days of receipt of a completed application for a waiver pursuant to subsection A, the director shall either grant or deny the waiver. If the director finds that plumbing fixtures that meet the requirements of this article are unavailable from any reasonable source for a period of more than thirty days, the director may grant to the applicant a written waiver allowing installation of plumbing fixtures that do not meet the standards prescribed by this article for a period of one hundred eighty days from the date the waiver is issued. If plumbing fixtures meeting the requirements of this article become available before the one hundred eighty day period expires, the waiver terminates automatically except as to any noncomplying plumbing fixtures already purchased pursuant to a waiver obtained under this subsection.

C. If a water conserving plumbing fixture required by this article would cause a health or safety hazard or an unusual hardship, including any hardship for persons with disabilities or officially designated historic buildings, or would require a greater quantity of water to be used to operate the fixture properly if installed in a new or existing building, the developer, builder, contractor, owner or tenant of the building may apply for a waiver of the requirements of this article. The application for waiver shall be in writing, shall contain sufficient documentation to support the claim that the fixture would cause a health or safety hazard or an unusual hardship, including any hardship to persons with disabilities or officially designated historic buildings, or would require a greater quantity of water to be used to operate the fixture properly, and shall be delivered to the director, either personally or by certified mail. The director may request additional information in order to determine whether the application for waiver is valid.

D. Within three days of receipt of a completed application for a waiver pursuant to subsection C, the director shall either grant or deny the waiver. If the director finds that the use of a water conserving plumbing fixture required by this article would cause a health or safety hazard or an unusual hardship, including any hardship for persons with disabilities or officially designated historic buildings, or would require a greater quantity of water to be used to operate the fixture properly, the director may grant to the applicant a written waiver allowing installation of noncomplying plumbing fixtures for those uses identified in the application.

45-316. Violation; civil penalties

A. A person who knowingly violates any provision of this article is subject to a civil penalty of not more than one hundred dollars for the first violation. A person who has previously been found in violation of any provision of this article is subject to a civil penalty of not more than two hundred fifty dollars for a second or any subsequent violation. The distribution, sale, offering for sale, importation or installation in this state of each plumbing fixture that fails to comply with the standards prescribed by this article constitutes a separate violation. Tampering with a fixture that was originally designed to comply with the standards prescribed by this article constitutes a violation. If a violation involves installing a fixture that does not comply with the standards prescribed by this article, the person who acquired the building or plumbing permit or the person who installed the fixture, or both, are subject to the penalties specified in this section.

B. The director, or a local official designated pursuant to section 9-500.08 or 11-251.09, shall bring an action to recover penalties under this section in superior court in the county in which the violation occurred, after a hearing conducted pursuant to section 45-318.

C. This section does not apply to the owner or occupant of a residential dwelling who violates this article in connection with the installation of a plumbing fixture in a residential dwelling occupied by the owner or occupant.

D. Except as provided in sections 9-500.08 and 11-251.09, all penalties collected under this article shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

45-317. Inspections

The director or the director's authorized representative shall, during normal business hours, have access to places where distributors or retailers sell, store or maintain plumbing fixtures and to unoccupied new residential construction for the purpose of making periodic inspections to determine compliance with this article. New residential construction shall only be inspected prior to issuance of the certificate of occupancy or upon final electrical inspection. Inspections pursuant to this section shall be on reasonable notice to the owner or occupant of the premises to be inspected unless reasonable grounds exist to believe that such notice would frustrate the enforcement of this article. The director may, and if required by law shall, apply for and obtain warrants for entry and inspection to carry out the administration and enforcement purposes of this article.

45-318. Cease and desist order; hearing; injunctive relief

A. If the director, or a local official designated pursuant to section 9-500.08 or 11-251.09, has reason to believe that a person is violating or has violated this article, the director or local official may give the person written notice that the person may appear and show cause at an administrative hearing to be held at least thirty days from the date of service of the notice why the person should not be ordered to cease and

desist from the violation. The notice shall inform the person of the date, time and place of the hearing and the consequences of failure to appear.

B. The decision and order of the director or the local official under subsection A of this section may take such form as the director or local official determines to be reasonable and appropriate and may include a determination of violation, a cease and desist order, a recommendation of a civil penalty and an order directing that positive steps be taken to abate or ameliorate any harm or damage arising from the violation. The person affected may seek judicial review of the final decision of the director as provided in section 45-114, subsection B in superior court in the county in which the violation is alleged to have occurred.

C. If the person continues the violation after the director or local official has issued a final decision and order pursuant to subsection B of this section, the director or local official may apply for a temporary restraining order or preliminary or permanent injunction from the superior court according to the Arizona rules of civil procedure. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against the violator.

D. Section 45-114, subsections A and B govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section.

45-319. Exception: preemption

A. The requirements of this article do not apply to any plumbing fixture that is documented to have been purchased by a plumbing wholesaler, retailer or end user and that is actually located in this state before January 1, 1994.

B. An ordinance adopted by a county, city or town relating to water conserving low-flow plumbing fixtures is not preempted by this article to the extent that the ordinance sets forth requirements that are at least as restrictive as the requirements of this article or regulates fixtures that are not specified in this article, but any such ordinance is preempted to the extent that its requirements are less restrictive than the requirements of this article.

45-320. Rules

The director may adopt any rules that are deemed necessary to carry out the purposes of this article. The director may adopt, by rule, lists of plumbing fixtures that satisfy the standards prescribed by this article. The director may also adopt, by rule, a list of uses for which plumbing fixtures satisfying the requirements of this article are inappropriate and may exempt such uses from further compliance with those requirements. The director may also amend this list as necessary to reflect advances in technology that allow water conserving plumbing fixtures to be employed for such uses. In adopting any rule defining the type, design or use of any plumbing fixture regulated under this article, the director shall give due consideration to the availability and affordability of the fixture and the method of its installation.