



INSTITUTE FOR JUSTICE
ARIZONA

September 25, 2024

Jennifer Cunico
Acting Director
Arizona Department of Health Services
jennifer.cunico@azdhs.gov

Dear Ms. Cunico:

I write regarding the cottage food program and the Department's response to 2024 Ariz. Sess. Laws ch. 18 (H.B. 2042). As you know, H.B. 2042 took effect September 14, 2024. It expanded the statutory definition of cottage food product to include a broad variety of foods, but left unchanged requirements such as a food handler card, registration with the Department, and labeling.

Notwithstanding H.B. 2042 becoming effective, the Department of Health Services is still operating under the prior, restrictive, statutes. The Department is refusing to allow cottage food producers to use or sell statutorily approved cottage foods. Department personnel are claiming that new foods must wait for administrative rule making that could take up to a year. The Department's Cottage Food Program website states that "The new Cottage Food Program requires rules to be written. Until the new rules are effective, the current rules for the Cottage Food Program will remain unchanged, and all information on the website is correct." <https://www.azdhs.gov/preparedness/epidemiology-disease-control/food-safety-environmental-services/cottage-food-program/index.php>. The website continues to list as "not approved" many foods that are clearly allowed under H.B. 2024, including but not limited to tamales, meat products, tortillas, cookies, fruit pies, cakes with frostings, brownies and fudge, salsas and other acidified food products, and foods defined as "potentially hazardous" because they require temperature control/refrigeration. One producer was recently told she could not use or sell vanilla extract, canned pickles, or beets.

The Department has no authority to refuse or delay implementation of H.B. 2042. H.B. 2042 did not give the department any authority to approve or disapprove particular cottage foods. Instead, the statutes completely define which foods are allowed and which are not. A.R.S. § 36-931(1). At most, the Department may only adopt rules "consistent with" H.B. 2042 and may give "guidance related to approved ingredient sources." A.R.S. § 36-933(B). But nothing in H.B. 2042 allows the Department to refuse to allow cottage foods which meet now-effective statutory definitions.

H.B. 2042 was an overwhelmingly bipartisan reform to free food entrepreneurs. Selling home cooked food is a safe way for Arizonans to provide for themselves and their families. In fact, data from other states with laws similar to H.B. 2042's reforms showed no foodborne illness caused by food sold under homemade food laws. We all know people who make and sell homemade foods that were illegal but now are legal. The Department should not—cannot—stand in their way.

Accordingly, I request that the Department cease refusing to allow statutorily approved cottage foods and change its website listing of “approved” and “not approved” food products to accurately reflect Arizona law as reformed by H.B. 2042. Arizonans cannot be refused the right to sell homemade foods that the Legislature has said they can make and sell.

Sincerely,



Paul Avelar
Managing Attorney
Institute for Justice AZ Office

CC (via email):

Office of Governor Katie Hobbs
Chad Campbell, Chief of Staff

Senate President Warren Petersen
Speaker of the House Ben Toma
Rep. Travis Grantham

Dept. of Health Services

Jennifer Botsford, Bureau Chief, Bureau of Environmental Health Services
Stacie Gravito, Office Chief, Administrative Counsel and Rules