

# AN ACT

To amend sections 901.43, 911.01, 911.011, 911.02, 915.24, 2305.37, 3701.22, 3701.83, 3707.33, 3707.99, 3709.09, 3715.02, 3715.52, 3715.99, 3724.03, 3732.01, 3732.02, 3732.03, 3732.04, 3732.05, 3732.06, 3732.08, 3732.09, 3732.11, 3732.12, 3732.13, 3732.14, 3732.99, 4303.021, 4303.13, 4303.14, 4303.15, 4303.181, 4303.182, 4303.183, 4736.01, 4745.01, 5104.05, 5104.051, 5739.02, and 5739.11; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 911.011 (911.021), 3732.01 (3717.01), 3732.02 (3717.51), 3732.03 (3717.43), 3732.04 (3717.45), 3732.05 (3717.46), 3732.06 (3717.12), 3732.08 (3717.47), 3732.09 (3717.11), 3732.10 (3717.13), 3732.11 (3717.49), 3732.12 (3717.50), 3732.13 (3717.52), 3732.14 (3717.09), and 3732.99 (3717.99); to enact sections 3715.021, 3715.511, 3717.02 to 3717.08, 3717.21 to 3717.33, 3717.41, 3717.42, 3717.44, and 3717.48; and to repeal sections 3707.38, 3715.21, 3715.211, and 3732.07 of the Revised Code to make changes in the laws pertaining to food service operations and to require the licensing of retail food establishments.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 901.43, 911.01, 911.011, 911.02, 915.24, 2305.37, 3701.22, 3701.83, 3707.33, 3707.99, 3709.09, 3715.02, 3715.52, 3715.99, 3724.03, 3732.01, 3732.02, 3732.03, 3732.04, 3732.05, 3732.06, 3732.08, 3732.09, 3732.11, 3732.12, 3732.13, 3732.14, 3732.99, 4303.021, 4303.13, 4303.14, 4303.15, 4303.181, 4303.182, 4303.183, 4736.01,

4745.01, 5104.05, 5104.051, 5739.02, and 5739.11 be amended; sections 911.011 (911.021), 3732.01 (3717.01), 3732.02 (3717.51), 3732.03 (3717.43), 3732.04 (3717.45), 3732.05 (3717.46), 3732.06 (3717.12), 3732.08 (3717.47), 3732.09 (3717.11), 3732.10 (3717.13), 3732.11 (3717.49), 3732.12 (3717.50), 3732.13 (3717.52), 3732.14 (3717.09), and 3732.99 (3717.99) be amended for the purpose of adopting new section numbers as indicated in parentheses; and sections 3715.021, 3715.511, 3717.02, 3717.03, 3717.04, 3717.05, 3717.06, 3717.07, 3717.08, 3717.21, 3717.22, 3717.23, 3717.24, 3717.25, 3717.26, 3717.27, 3717.28, 3717.29, 3717.30, 3717.31, 3717.32, 3717.33, 3717.41, 3717.42, 3717.44, and 3717.48 of the Revised Code be enacted to read as follows:

Sec. 901.43. (A) The director of agriculture may authorize any department of agriculture laboratory to perform a laboratory service for any person, organization, political subdivision, state agency, federal agency, or other entity, whether public or private, ~~and may charge a reasonable fee for performance of the laboratory service.~~ The

~~(B) The director shall adopt and enforce rules to provide for the rendering of a laboratory service and may.~~

(B) The director may charge a reasonable fee for the performance of a laboratory service, except when the service is performed on an official sample taken by the director acting pursuant to Title IX, Chapter 3715., or Chapter 3717. of the Revised Code; by a board of health acting as the licenser of retail food establishments or food service operations under Chapter 3717. of the Revised Code; or by the director of health acting as the licenser of food service operations under Chapter 3717. of the Revised Code. The director of agriculture shall adopt rules specifying what constitutes an official sample.

The director shall publish a list of laboratory services offered, together with the fee for each service.

(C) The director may enter into a contract with any person, organization, political subdivision, state agency, federal agency, or other entity for the provision of a laboratory service.

~~(D)(1) The director may adopt rules specifying what constitutes an official sample.~~

~~(2) The director shall not charge a fee for a laboratory service performed on an official sample, but may charge a fee for any other sample taken or laboratory service performed by the department.~~

~~(E)(1)~~ The director may adopt rules establishing standards for accreditation of laboratories and laboratory services and in doing so may adopt by reference existing or recognized standards or practices.

(2) The director may inspect and accredit laboratories and laboratory services, and may charge a reasonable fee for the inspections and accreditation.

~~(F)~~(E)(1) All moneys collected by the director under this section that are from fees generated by a laboratory service performed by the department and related to the diseases of animals, and all moneys so collected that are from fees generated for the inspection and accreditation of laboratories and laboratory services related to the diseases of animals, shall be deposited in the animal industry laboratory fund, which is hereby created in the state treasury. The director shall use the moneys in the animal industry laboratory fund to purchase supplies and equipment for the laboratory that provides laboratory services related to the diseases of animals.

(2) All moneys collected by the director under this section that are from fees generated by a laboratory service performed by the consumer analytical laboratory, and all moneys so collected that are from fees generated for the inspection and accreditation of laboratories and laboratory services not related to weights and measures or the diseases of animals, shall be deposited in the laboratory services fund, which is hereby created in the state treasury. The moneys held in the fund may be used to pay the expenses necessary to operate the consumer analytical laboratory, including the purchase of supplies and equipment.

(3) All moneys collected by the director under this section that are from fees generated by a laboratory service performed by the weights and measures laboratory, and all moneys so collected that are from fees generated for the inspection and accreditation of laboratories and laboratory services related to weights and measures, shall be deposited in the weights and measures laboratory fund, which is hereby created in the state treasury. The moneys held in the fund may be used to pay the expenses necessary to operate the division of weights and measures, including the purchase of supplies and equipment.

Sec. 911.01. ~~(A) Except as provided in division (B) of this section, "bakery," as As used in sections 911.01 to 911.20 of the Revised Code, "bakery" means a building or part of a building wherein is carried on the production, preparation, packing, storing, display, or sale to other than the ultimate consumer of bread, stuffed breads, cake, pies, cookies, crackers, doughnuts, noodles, waffle cones, pizza crusts for resale, or other bakery products, whether frozen, fried, deep fried, or partially or completely baked, including any separate room used for the convenience or accommodation of the workers. Sections 911.02, 911.04, 911.11, 911.12, 911.13, and 911.15 of the Revised Code do not apply to retail stores where bakery products are~~

~~sold but not produced.~~

~~(B) "Bakery" does not mean a food service operation licensed under section 3732.03 of the Revised Code that includes the preparation or serving of bakery products.~~

~~Sec. 911.02. Except as provided in division (A) of section 3732.07 of the Revised Code, each~~ Each person, firm, partnership, or corporation that owns or operates a bakery shall register each bakery that it owns or operates with the director of agriculture. For the registration, the owner or operator of each bakery shall pay an annual fee of thirty dollars for a production capacity of one thousand pounds of bakery product per hour or less and an annual fee of thirty dollars for each one thousand pounds of bakery product per hour capacity, or part thereof, in excess of one thousand pounds of bakery product per hour.

Any person who owns or operates a home bakery with only one oven, in a stove of ordinary home kitchen design and located in a home, used for the baking of baked goods to be sold, shall pay a sum of ten dollars annually for registration regardless of the capacity of the home bakery oven. The registration shall be renewed annually by the thirtieth day of September and shall be renewed according to the standard renewal procedure of Chapter 4745. of the Revised Code. The registration of the bakery shall show the location, including municipal corporation, street, and number, the name of the owner, and the name of the operator. The application for registration shall be made on a form prescribed and provided by the director. All moneys received from registration fees and fines collected under sections 911.01 to 911.20 of the Revised Code shall be deposited with the treasurer of state to the credit of the food safety fund created in section 915.24 of the Revised Code. All annual renewal registration fees required by this section shall be paid by the applicant for the renewal to the treasurer of state for deposit into the food safety fund.

No bakery product that is manufactured in an out-of-state bakery shall be sold or offered for sale within this state unless the bakery is in compliance with sections 911.01 to 911.20 of the Revised Code, and is registered, having paid the annual registration fee.

Registration of out-of-state bakeries is not required if a reciprocal agreement is in effect whereby a bakery located in this state is not subject to a license or registration fee by the receiving state or a political subdivision thereof.

~~Sec. 911.011 911.021. (A) The preparation and serving of bakery products by a food service operation licensed under section 3732.03 of the Revised Code shall be regulated under Chapter 3732. of the Revised Code~~

~~and not under this chapter.~~

~~(B)~~ A bakery shall be regulated under this chapter and not under Chapter ~~3732~~ 3717 of the Revised Code when ~~either of the following applies:~~

~~(1) The bakery only serves bakery products on its premises;~~

~~(2) The bakery serves bakery products for consumption on its premises and also serves frozen desserts, beverages, nuts, popcorn, candy, or similar confections, dairy products, or any combination of those items for consumption the bakery's primary business is wholesale, even if the bakery also sells bakery products at retail on its premises.~~

Sec. 915.24. (A) There is hereby created in the state treasury the food safety fund. All of the following moneys shall be credited to the fund:

(1) Bakery registration fees and fines received under sections 911.02 to 911.20 of the Revised Code;

(2) Cannery license fees and renewal fees received under sections 913.01 to 913.05 of the Revised Code;

(3) Moneys received under sections 913.22 to 913.28 of the Revised Code;

(4) License fees, fines, and penalties recovered for the violation of sections 915.01 to 915.12 of the Revised Code;

(5) License fees collected under sections 915.14 to 915.23 ~~and under section 3715.21~~ of the Revised Code;

(6) License fees, other fees, and fines collected by or for the director of agriculture under Chapter 3717. of the Revised Code.

(B) The director of agriculture shall use the moneys deposited into the food safety fund to administer and enforce the laws pursuant to which the moneys were collected.

Sec. 2305.37. (A) As used in this section:

(1) "Agency" means any nonhospital, charitable nonprofit corporation that is organized and operated pursuant to Chapter 1702. of the Revised Code and that satisfies both of the following, or any nonhospital, charitable association, group, institution, organization, or society that is not organized and not operated for profit and that satisfies both of the following:

(a) It distributes perishable food, directly or indirectly, to individuals in need.

(b) It does not charge or accept any form of compensation from the individuals in need for the distribution of the perishable food to them.

(2) "Food service operation" has the same meaning as in section ~~3732.04~~ 3717.01 of the Revised Code.

(3) "Food that is gleaned" means perishable food that remains on a farm

or other real property and that the owner, lessee, renter, or operator of the property permits one or more persons to salvage free-of-charge for subsequent donation to one or more agencies.

(4) "Harm" means injury, death, or loss to person or property.

(5) "Hospital" has the same meaning as in section 2108.01, 3701.01, or 5122.01 of the Revised Code.

(6) "Individuals in need" means those persons who an agency determines are eligible to receive free distributions of perishable food because of poverty, illness, disability, infancy, or other conditions or circumstances that may result in persons having a need to receive free distributions of perishable food.

(7) "Perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, age, or physical condition. "Perishable food" includes, but is not limited to, fresh meats, processed meats, poultry, fish and other seafood, dairy products, bakery products, eggs in the shell, fresh fruits, fresh vegetables, food that is gleaned, food that is packaged, refrigerated, or frozen, food that is canned, and prepared or other food that has not been served by a restaurant, cafeteria, hospital, hotel, caterer, or other food service operation to any customer, patient, or other person in the ordinary course of business, by a public or private school, college, university, or other educational institution to a student or another person on the premises in the ordinary course of the operation of the institution, or by a fraternal, veteran's, or other organization to its members or other persons on the premises in the ordinary course of the operation of the organization.

(8) "Person" has the same meaning as in section 1.59 of the Revised Code and additionally includes governmental entities.

(9) "Sale date" has the same meaning as in section 3715.171 of the Revised Code.

(10) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a product liability claim but does not include a civil action for a breach of contract or another agreement between persons.

(B) Notwithstanding Chapter 3715. of the Revised Code, a person who, in good faith, donates perishable food to an agency is not liable in damages in a tort action for harm that allegedly arises because that perishable food, when distributed by the agency or any other agency to a particular individual in need, is not fit for human consumption, if both of the following apply:

(1) Prior to the donation of the perishable food to the agency, the person

determines that the perishable food will be fit for human consumption at the time of its donation. A presumption favoring liability does not arise because the perishable food is donated to an agency on or after an applicable sale date.

(2) The person does not make the determination that the perishable food will be fit for human consumption at the time of its donation to the agency in a manner that constitutes negligence or willful or wanton misconduct.

(C)(1) This section does not create a new cause of action or substantive legal right against persons who donate perishable food to an agency.

(2) This section does not affect any immunities from or defenses to tort liability established by another section of the Revised Code or available at common law to which persons who donate perishable food other than to agencies may be entitled.

Sec. 3701.22. The department of health shall maintain a chemical and bacteriological laboratory for the ~~examination~~ following:

(A) Examination of public water supplies; and the effluent of sewage purification works, ~~for the diagnosis~~;

(B) Diagnosis of diphtheria, typhoid fever, hydrophobia, glanders, and such other diseases as it deems necessary, ~~and for the examination of food suspected to be the cause of disease. The department shall examine and report to the director of environmental protection and the public each year the condition of all public water supplies~~;

(C) Analysis of patient specimens and food samples necessary for investigation of foodborne illnesses. In foodborne illness investigations, the laboratory shall cooperate and consult with the director of agriculture acting pursuant to section 3715.02 of the Revised Code.

Sec. 3701.83. (A) There is hereby created in the state treasury the general operations fund. Moneys in the fund shall be used for the purposes specified in sections 3701.04, 3701.344, 3701.88, 3702.20, 3710.15, 3711.021, 3717.45, 3721.02, 3722.04, ~~3732.04~~, 3733.04, 3733.25, 3733.43, 3748.04, 3748.05, 3748.07, 3748.12, 3748.13, 3749.04, 3749.07, 4747.04, 4751.04, and 4769.09 of the Revised Code.

(B) The alcohol testing program fund is hereby created in the state treasury. The director of health shall use the fund to administer and enforce the alcohol testing and permit program authorized by section 3701.143 of the Revised Code.

The fund shall receive transfers from the liquor control fund created under section 4301.12 of the Revised Code. All investment earnings of the alcohol testing program fund shall be credited to the fund.

Sec. 3707.33. The board of health of a city or general health district may

appoint, define the duties of, and fix the compensation of the number of inspectors of shops, wagons, appliances, and ~~meat food~~, and the number of other persons necessary to carry out this chapter and Chapter 3717. of the Revised Code and, if applicable, to carry out any duties assumed by the board under an agreement entered into under division (B) of section 917.02 of the Revised Code. Inspectors for those purposes may enter any house, vehicle, or yard. The board may authorize the health commissioner to perform the duties of the inspectors.

Sec. 3707.99. (A) Whoever violates section 3707.03 of the Revised Code, unless good and sufficient reason therefor is shown, is guilty of a minor misdemeanor.

~~(B) Whoever violates section 3707.38 of the Revised Code is guilty of a minor misdemeanor.~~

~~(C)~~ Whoever violates section 3707.48 of the Revised Code is guilty of a minor misdemeanor on a first offense; on each subsequent offense such person is guilty of a misdemeanor of the fourth degree.

Sec. 3709.09. (A) The board of health of a city or general health district may, by rule, establish a uniform system of fees to pay the costs of any services provided by the board. Fees for services provided by the board for purposes specified in sections 3701.344, 3711.05, 3730.03, ~~3732.04~~, 3733.04, 3733.25, and 3749.04 of the Revised Code shall be established in accordance with rules adopted under division (B) of this section. The district advisory council, in the case of a general health district, and the legislative authority of the city, in the case of a city health district, may disapprove any fee established by the board of health under this division, and any such fee, as disapproved, shall not be charged by the board of health.

~~(B)(1)~~ The public health council shall adopt rules under section 111.15 of the Revised Code that establish fee categories and uniform methodologies for use in calculating the costs of services provided for purposes specified in sections 3701.344, 3711.05, 3730.03, ~~3732.04~~, 3733.04, 3733.25, and 3749.04 of the Revised Code. In adopting the rules, the public health council shall consider recommendations it receives from advisory boards established either by statute or the director of health for entities subject to the fees.

~~(2) As used in this division, "licensor" and "vending machine location" have the same meanings as in section 3732.01 of the Revised Code.~~

~~The public health council shall, under its rules, prohibit licensors from increasing fees under section 3732.04 of the Revised Code for vending machine locations by a percentage of increase over the previous year's fee that exceeds the percentage of increase in the consumer price index for all urban consumers (United States city average, all items), prepared by the~~



~~United States department of labor, bureau of labor statistics, for the immediately preceding calendar year.~~

(C) At least thirty days prior to establishing a fee for a service provided by the board for a purpose specified in section 3701.344, 3711.05, 3730.03, 3733.04, 3733.25, or 3749.04 of the Revised Code, a board of health shall notify any entity that would be affected by the proposed fee of the amount of the proposed fee. ~~A board of health shall give notice in accordance with section 3732.04 of the Revised Code of the hearing regarding a proposed fee for a service provided for the purpose specified in that section.~~

Sec. 3715.02. (A) The director of agriculture shall adopt rules in accordance with Chapter 119. of the Revised Code that establish, when otherwise not established by a law of this state, definitions for a food or class of food and standards for the following items as they pertain to the food or class of food:

- (1) Quality, identity, purity, grade, and strength;
- (2) Packaging and labeling;
- (3) Food processing equipment;
- (4) Processing procedures;
- (5) Fill of containers.

The standards and definitions, where applicable, shall conform to the standards for foods adopted by the United States department of agriculture. ~~The rules, where applicable, shall conform to and be the same as and the United States food and drug administration. Portions of Titles 7, 9, and 21 of the Code of Federal Regulations or the regulations adopted for the enforcement of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301 et seq., as amended, may be adopted as rules by referencing the federal regulations, subject to the approval of the joint committee on agency rule review.~~

~~(B) The director shall adopt rules in accordance with Chapter 119. of the Revised Code that establish, when otherwise not established by a law of this state, standards for food establishment facilities and sanitation of food establishments.~~

~~As used in this division, "food establishment" means a premises or part of a premises, other than a food service operation as defined in section 3732.01 of the Revised Code, where food is prepared, processed, stored, manufactured, transported, or otherwise held or handled for sale or distribution.~~

~~(C) In adopting rules that establish definitions and standards of identity for a food or class of food in which only a limited number of optional ingredients are permitted, the director shall designate the optional~~

ingredients that must be listed on the label.

(B) The director shall adopt rules in accordance with Chapter 119. of the Revised Code that establish procedures for the performance of sample analyses of food, food additives, and food packaging materials. The circumstances under which a sample analysis may be required include the following:

(1) When a food, food additive, or food packaging material is the subject of a consumer complaint;

(2) When requested by a consumer after a physician has isolated an organism from the consumer as the physician's patient;

(3) When a food, food additive, or food packaging material is suspected of having caused an illness;

(4) When a food, food additive, or food packaging material is suspected of being adulterated or misbranded;

(5) When a food, food additive, or food packaging material is subject to verification of food labeling and standards of identity;

(6) At any other time the director considers a sample analysis necessary.

(C) In foodborne illness investigations, the director of agriculture shall cooperate and consult with the laboratory maintained by the department of health under section 3701.22 of the Revised Code.

(D) The director or the director's designee shall do all of the following:

(1) Inspect drugs, food, or drink manufactured, stored, or offered for sale in ~~the~~ this state;

(2) Prosecute or cause to be prosecuted each person engaged in the unlawful manufacture or sale of an adulterated drug or article of food or drink, in violation of law;

(3) Enforce all laws against fraud, adulteration, or impurities in drugs, foods, or drinks and unlawful labeling within ~~the~~ this state.

(E) The director may appoint or contract for one or more qualified persons to enforce the provisions of this chapter.

Sec. 3715.021. (A) As used in this section, "wholesale food establishment" means a premises or part of a premises where food is processed, packaged, manufactured, or otherwise held or handled for sale or distribution at wholesale to persons other than the ultimate consumers. "Wholesale food establishment" includes the activities of a bakery, confectionery, cannery, bottler, warehouse, or distributor and the activities of an entity that receives or salvages distressed food for sale or use as food.

(B) The director of agriculture shall adopt rules in accordance with Chapter 119. of the Revised Code that establish, when otherwise not established by the Revised Code, standards for wholesale food

establishments, including the facilities of wholesale food establishments and their sanitation.

A business or that portion of a business that is regulated by the department of agriculture under Chapter 917. or 918. of the Revised Code is not subject to regulation under this section as a wholesale food establishment.

Sec. 3715.52. (A) The following acts and causing them are prohibited:

(1) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) The adulteration or misbranding of any food, drug, device, or cosmetic;

(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 3715.61 or 3715.65 of the Revised Code;

(5) The dissemination of any false advertisement;

(6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by section 3715.70 of the Revised Code;

(7) The giving of a guaranty or undertaking that is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic;

(8) The removal or disposal of a detained or embargoed article in violation of section 3715.55 or 3715.551 of the Revised Code;

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if the act is done while the article is held for sale and results in the article being misbranded;

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted pursuant to sections 3715.52 to 3715.72 of the Revised Code;

(11) The using, on the labeling of any drug or in any advertisement relating to a drug, of any representation or suggestion that any application with respect to the drug is effective under section 3715.65 of the Revised Code or that the drug complies with the provisions of that section;

(12) The using by any person to the person's own advantage, or revealing, other than to the director of agriculture or to the courts when relevant in any judicial proceeding under sections 3715.52 to 3715.72 of the

Revised Code, any information acquired under authority of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, concerning any information that as a trade secret is entitled to protection;

(13) The issuance by the manufacturer, packer, or distributor of a dangerous drug of any advertisements, catalogues, or price lists, except those lists specifically designed for disseminating price change information, that do not contain in clearly legible form the name and place of business of the manufacturer who mixed the final ingredients and, if different, the manufacturer who produced the drug in its finished dosage form and, if different, the packer or distributor.

(B)(1) No person at a flea market shall sell, offer for sale, or knowingly permit the sale of any of the following products:

(a) Baby food, infant formula, or similar products;

(b) Any drug, cosmetic, or device;

(c) Any product on which is printed or stamped an expiration date or a date recommended by the manufacturer as either the last day on which the product should be offered for sale or the last day on which the product should be used.

(2) Division (B)(1) of this section does not apply to a person who keeps available for public inspection an identification card identifying the person as an authorized representative of the manufacturer or distributor of any drug, cosmetic, or device, as long as the card is not false, fraudulent, or fraudulently obtained.

(3) Division (B)(1)(c) of this section does not apply to a person or governmental entity that is licensed as a retail food establishment or food service operation under Chapter ~~3732~~ 3717 of the Revised Code or is listed in division ~~(A)(B)~~(9) or (12) of section ~~3732.01~~ 3717.42 of the Revised Code.

(4) As used in division (B)(1) of this section, "flea market" means any location, other than a permanent retail store, at which space is rented or otherwise made available to others for the conduct of business as transient or limited vendors as defined in section 5739.17 of the Revised Code.

Sec. 3715.551. (A) As used in this section, "board of health," "retail food establishment," and "food service operation" have the same meanings as in section 3717.01 of the Revised Code.

(B) The embargoing of a food may be performed by a board of health approved under section 3717.11 of the Revised Code to serve as the licensor of retail food establishments or food service operations, the director of health acting under section 3717.11 of the Revised Code as the licensor of food service operations, or a representative authorized to act on behalf of the

board of health or director of health.

The director of agriculture shall adopt rules in accordance with Chapter 119. of the Revised Code specifying the conditions under which a food may be embargoed under this section and the procedures that must be followed when that action is taken.

Sec. 3715.99. (A) Whoever violates sections 3715.13 to 3715.19, or 3715.38 of the Revised Code is guilty of a minor misdemeanor.

~~(B) Whoever violates section 3715.21 of the Revised Code is guilty of a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on each subsequent offense.~~

~~(C)~~ Whoever violates section 3715.22, 3715.25, 3715.27, or 3715.34 of the Revised Code is guilty of a misdemeanor of the fourth degree.

~~(D)~~(C) Whoever violates section 3715.23 or 3715.36 of the Revised Code is guilty of a misdemeanor of the second degree.

~~(E)~~(D) Whoever violates section 3715.52 or 3715.65 of the Revised Code is guilty of a misdemeanor of the fourth degree on a first offense; on each subsequent offense, the person is guilty of a misdemeanor of the second degree.

~~(F)~~(E) Whoever violates section 3715.521 of the Revised Code is guilty of a minor misdemeanor. A violation of that section occurs on a daily basis, not according to the number of times per day that an expired drug, baby food, or infant formula is sold, offered for sale, or delivered at retail or to the consumer. Each day of violation is a separate offense.

Sec. ~~3732.04~~ 3717.01. As used in this chapter:

(A) "Ohio uniform food safety code" means the food safety and related standards adopted under section 3717.05 of the Revised Code.

(B) "Food" means any raw, cooked, or processed edible substance used or intended for use in whole or in part for human consumption. "Food" includes ice, water or any other beverage, food ingredients, and chewing gum.

(C) "Retail food establishment" means a premises or part of a premises where food, over-the-counter drugs, nutrients designed for use in lieu of pharmaceuticals, and products designed for use as dietary supplements are stored, processed, prepared, manufactured, or otherwise held or handled for retail sale. Except when expressly provided otherwise, "retail food establishment" includes a seasonal retail food establishment and temporary retail food establishment.

As used in this division:

(1) "Retail" means the sale of food to a person who is the ultimate consumer.

(2) "Prepared" means any action that affects a food, including receiving and maintaining it at the temperature at which it was received.

(D) "Seasonal retail food establishment" means a retail food establishment that is operated for not more than six months in a licensing period.

(E) "Temporary retail food establishment" means a retail food establishment that is operated at an event for not more than five consecutive days, except when operated for more than five consecutive days pursuant to division (E)(2) of section 3717.23 of the Revised Code.

(F) "Food service operation" means a place, location, site, or separate area where food intended to be served in individual portions is prepared or served for a charge or required donation, ~~including mobile food service operations, catering food service operations, temporary food service operations, seasonal food service operations, vending machine locations, and food delivery sales operations~~ As used in this division, "served" means a response made to an order for one or more individual portions of food in a form that is edible without washing, cooking, or additional preparation and "prepared" means any action that affects a food other than receiving or maintaining it at the temperature at which it was received.

~~"Food service operation" does not include any of the following:~~

~~(1) A private home in which individuals related by blood, marriage, or law reside and in which the food that is prepared or served is intended only for those individuals and their nonpaying guests;~~

~~(2) A residential facility that accommodates not more than sixteen residents; is licensed, certified, registered, or otherwise regulated by the federal government or by the state or a political subdivision of the state; and prepares food for or serves food to only the residents of the facility, the staff of the facility, and any nonpaying guests of residents or staff;~~

~~(3) Churches, schools, fraternal or veterans' organizations, volunteer fire organizations, or volunteer emergency medical service organizations preparing or serving food intended for individual portion service on their premises for not more than seven consecutive days or not more than fifty two separate days during a licensing period;~~

~~(4) Common carriers regulated by the federal government;~~

~~(5) Food manufacturing or food processing operations regulated by the federal government or a state agency, as defined in section 1.60 of the Revised Code, other than the department of health;~~

~~(6) Operations other than mobile food service operations serving only frozen desserts; beverages, nuts, popcorn, candy, or similar confections; bakery products identified in section 911.01 of the Revised Code; or any~~

~~combination of these items;~~

~~(7) Operations serving five or fewer individuals daily;~~

~~(8) Type A and type B family day care homes, as defined in section 5104.01 of the Revised Code;~~

~~(9) Vending machine locations where the only vending machines are machines that dispense foods exclusively from one or both of the following categories:~~

~~(a) Prepackaged foods that are not potentially hazardous as defined in rules adopted by the public health council under section 3732.02 of the Revised Code;~~

~~(b) Nuts, panned or wrapped bulk chewing gum, or panned or wrapped bulk candies.~~

~~(10) Places servicing vending machines at vending machine locations described in division (A)(9) of this section;~~

~~(11) Commissaries servicing vending machines dispensing only milk, milk products, or frozen desserts that are under a state or federal inspection and analysis program;~~

~~(12) Controlled location vending machine locations. As used in this division, "controlled location vending machine location" means a vending machine location at which all of the following apply:~~

~~(a) The vending machines dispense only foods that are not potentially hazardous as defined in rules adopted by the public health council under section 3732.02 of the Revised Code;~~

~~(b) The machines are designed to be filled and maintained in a sanitary manner by untrained persons;~~

~~(c) Minimal protection is necessary to ensure against contamination of food and equipment.~~

~~(B) Except when expressly provided otherwise, "food service operation" includes a catering food service operation, food delivery sales operation, mobile food service operation, seasonal food service operation, temporary food service operation, and vending machine location.~~

~~(G) "Catering food service operation" means a food service operation where food is prepared for serving at a function or event held at an off-premises site, for a charge determined on a per-function or per-event basis.~~

~~(C) "Food" means any raw, cooked, or processed edible substance, ice, water, beverage, or ingredient used or intended for use in whole or in part for human consumption.~~

~~(D)(H) "Food delivery sales operation" means a food service operation from which individual portions of food are ordered by a customer, prepared~~

at another food service operation, and delivered to the customer by a person other than an employee of the food service operation that prepared the food.

~~(E)~~ "Frozen desserts" has the same meaning as in section 917.01 of the Revised Code.

~~(F)~~ "Government entity" means the state, a political subdivision of the state, another state, or a political subdivision or other local body of another state.

~~(G)~~ "Licensee" means the person or government entity holding a license to operate a food service operation.

~~(H)~~ "Licensing period" means the period beginning the first day of March and ending the last day of February of the next succeeding year.

~~(I)~~ "Licensor" means either of the following:

~~(1)~~ The board of health of a city or general health district, or the authority having the duties of a board of health under section 3709.05 of the Revised Code, approved by the director of health under section 3732.09 of the Revised Code;

~~(2)~~ The director of health acting pursuant to section 3732.09 of the Revised Code.

~~(J)~~(I) "Mobile food service operation" means a food service operation that is operated from a movable vehicle, portable structure, or watercraft; and that routinely changes location; and does not remain, except that if the operation remains at any one location for more than forty consecutive days, the operation is no longer a mobile food service operation, but is either a different type food service operation or a retail food establishment according to the activities being engaged in and the type of food being offered for sale. "Mobile food service operation" includes an operation that does not remain at any one location for more than forty consecutive days and serves only frozen desserts; beverages, nuts, popcorn, candy, or similar confections; bakery products identified in section 911.01 of the Revised Code; or any combination of those items.

~~(K)~~(J) "Seasonal food service operation" means a food service operation, other than a mobile food service operation, that is operated for not more than ~~eight~~ six months in ~~each~~ a licensing period.

~~(L)~~(K) "Temporary food service operation" means a food service operation that is operated at ~~a single~~ an event for not more than five consecutive days, except when operated for more than five consecutive days pursuant to division (E)(2) of section ~~3732.03~~ 3717.43 of the Revised Code.

~~(M)~~ "Vending machine" means a self-service device that, upon insertion of currency, tokens, or similar means, automatically dispenses a predetermined unit serving of food either in bulk or in package and does not



~~require replenishing after each use.~~

~~(N)(L)~~ "Vending machine location" means an area or room where one or more vending machines are installed and operated, except that if the machines within an area are separated by more than one hundred fifty feet, each area separated by that distance constitutes a separate vending machine location. As used in this division, "vending machine" means a self-service device that automatically dispenses on the insertion of currency, tokens, or similar means a predetermined unit serving of food, either in bulk or in package, without having to be replenished after each use.

(M) "Board of health" means a board of health of a city or general health district or the authority having the duties of a board of health under section 3709.05 of the Revised Code.

(N) "Government entity" means this state, a political subdivision of this state, another state, or a political subdivision or other local government body of another state.

(O) "Licensor" means one of the following:

(1) A board of health approved under section 3717.11 of the Revised Code;

(2) The director of agriculture acting pursuant to section 3717.11 of the Revised Code with respect to the licensing of retail food establishments;

(3) The director of health acting pursuant to section 3717.11 of the Revised Code with respect to the licensing of food service operations.

(P) "Licensing period" means the first day of March to the last day of February of the next succeeding year.

Sec. 3717.02. (A) There is hereby created the retail food safety advisory council. The council shall consist of the director of agriculture or a person the director designates to serve on the director's behalf, the director of health or a person the director designates to serve on the director's behalf, and twelve additional members appointed jointly by the director of agriculture and the director of health, as follows:

(1) Three persons representing the interests of retail food establishments;

(2) Three persons representing the interests of food service operations;

(3) Four persons representing boards of health or the health departments operated by boards of health;

(4) One person representing the academic community who is knowledgeable in food science or food technology;

(5) One person representing the general public who is not employed by this state or any of its political subdivisions and has no pecuniary interest in a retail food establishment or food service operation.

(B) In making appointments to the council, the director of agriculture and director of health shall jointly consult with statewide trade and professional organizations that represent the interests of retail food establishments and food service operations. The organizations may nominate persons to be considered for appointment as council members.

(C) Of the initial appointments made to the council, five shall be for terms ending three years after appointment, four shall be for terms ending two years after appointment, and three shall be for terms ending one year after appointment. Thereafter, terms of office shall be three years. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Members may be reappointed.

Vacancies shall be filled in the manner provided for original appointments. A member appointed to fill a vacancy occurring before the expiration date of the term for which the member's predecessor was appointed shall hold office as a member for the remainder of that term. A member shall continue in office after the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

(D) A member may be removed from office for failing to attend two consecutive council meetings without showing good cause for the absences. Removal from office requires joint action by the director of agriculture and director of health.

(E) The director of agriculture or the person the director designates to serve on the director's behalf and director of health or the person the director designates to serve on the director's behalf shall serve as the council's co-chairpersons without voting rights. A two-thirds majority vote of the council's voting members is necessary for the council to act on any matter.

(F) Members shall be reimbursed for actual and necessary expenses incurred in performing duties as members. The expenses shall be shared equally by the department of agriculture and the department of health. Both departments shall provide administrative support to the council.

(G) The retail food safety advisory council is not subject to section 101.84 of the Revised Code.

Sec. 3717.03. (A) The retail food safety advisory council shall meet as necessary to fulfill its duties, which include all the following:

- (1) Making recommendations for the Ohio uniform food safety code;
- (2) Examining specific food safety issues raised by the director of agriculture or director of health and making recommendations regarding those issues;
- (3) Mediating unresolved issues among state agencies about the

pretation of rules adopted under this chapter and making recommendations regarding the issues;

(4) Making recommendations to the director of agriculture and director of health with respect to improving the food safety awareness of consumers and their confidence in the state's food supply;

(5) Making recommendations to the director of agriculture and director of health regarding the licensing categories and inspection frequencies to be used in regulating retail food establishments and food service operations;

(6) Making recommendations to the director of health with respect to the program for certification of individuals in food protection and approval of courses in food protection.

(B) The council shall hold a meeting at the request of the director of agriculture, at the request of the director of health, or on written request of three or more voting members of the council.

Sec. 3717.04. The director of agriculture, the public health council, and the director of health have the exclusive power in this state to adopt rules regarding retail food establishments and food service operations. The rules adopted under this chapter shall be applied uniformly throughout this state.

All rules adopted under this chapter shall be adopted in accordance with Chapter 119. of the Revised Code. Subject to the approval of the joint committee on agency rule review, portions of the rules may be adopted by referencing all or any part of any federal regulations pertaining to food safety.

Sec. 3717.05. (A) The director of agriculture and the public health council shall adopt rules establishing standards for safe food handling and sanitation in retail food establishments and food service operations. The rules shall be compiled as the Ohio uniform food safety code, which shall be used by the licensors of retail food establishments and food services operations in ensuring the safe handling of food in this state. All scientific provisions of the Ohio uniform food safety code that are relevant to both retail food establishments and food service operations shall be adopted by the director of agriculture and the public health council with each other's concurrence.

The Ohio uniform food safety code shall include the following:

(1) Criteria for sanitation in retail food establishments and food service operations;

(2) Criteria for equipment in retail food establishments and food service operations;

(3) Criteria for reviewing the facility layout and equipment specifications of retail food establishments and food service operations;

(4) A definition of "potentially hazardous" as it pertains to food in retail food establishments and to food in food service operations;

(5) Criteria to be used in evaluating the primary business of a person or government entity for purposes of determining whether the person or entity should be licensed as a retail food establishment or food service operation.

(B)(1) Except as provided in division (B)(2) of this section, if a model food code is established by the United States food and drug administration, the Ohio uniform food safety code shall be based on the most current version of the food and drug administration's model food code. If the food and drug administration adopts, modifies, or rescinds a provision in the model food code, not later than nine months after the administration's action, the director of agriculture and public health council shall adopt, amend, or rescind provisions in the Ohio uniform food safety code to ensure that it continues to conform with the model food code.

(2) The Ohio uniform food safety code may contain or omit provisions that do not correspond to the food and drug administration's model food code if the director of agriculture or the public health council, with each other's concurrence, determines either of the following:

(a) That rules can be adopted under this chapter that provide protection at least as effective as that which would be provided by basing the rules on the model food code;

(b) That local conditions warrant the adoption of standards that are different from the model food code.

Sec. 3717.06. The director of agriculture shall create within the department of agriculture a position to be filled by an individual knowledgeable in food safety and the epidemiology of foodborne illness. The director of health shall create within the department of health a position to be filled by an individual knowledgeable in food safety rules concerning food service operations and the epidemiology of foodborne illness. The individuals appointed to these positions shall serve as liaisons between the departments. They shall also serve as the departments' liaisons with other state agencies, boards of health, representatives of retail and other food establishments, representatives of food service operations, and the federal government.

Sec. 3717.07. For purposes of establishing a licensing fee under sections 3717.25 and 3717.45 of the Revised Code, the director of agriculture and the public health council shall adopt rules establishing uniform methodologies for use in calculating the costs of licensing retail food establishments in the categories specified by the director and the costs of licensing food service operations in the categories specified by the council. In adopting the rules,

the director of agriculture and the public health council shall consider any recommendations received from advisory boards or other entities representing the interests of retail food establishments and food service operations.

With regard to any fees charged for licensing vending machine locations, the rules shall prohibit a licensor from increasing fees by a percentage of increase over the previous year's fee that exceeds the percentage of increase in the consumer price index for all urban consumers (United States city average, all items), prepared by the United States department of labor, bureau of labor statistics, for the immediately preceding calendar year.

Sec. A. A) The director of agriculture and director of health shall strive to increase consumer confidence in the state's food supply by promoting food safety awareness and education. The efforts of the director of agriculture and director of health shall be made, when appropriate and available, through partnerships with representatives of retail food establishments, representatives of food service operations, and representatives of the academic community, including the Ohio state university extension service.

(B) As part of their promotion of food safety awareness, the director of agriculture and the director of health shall do the following:

(1) Develop training programs regarding the Ohio uniform food safety code. The directors may offer the training programs separately but shall coordinate the content of the programs to the greatest extent practicable. The training programs shall be made available to the employees of the department of agriculture, employees of the department of health, representatives of boards of health and the health officials employed by the boards, representatives of retail food establishments, and representatives of food service operations.

(2) Co-sponsor a biennial statewide food safety conference. Additional statewide food safety conferences may be held as considered appropriate by the director of agriculture and director of health.

Sec. ~~3732.14~~ 3717.09. In accordance with rules adopted by the public health council under section ~~3732.02~~ 3717.51 of the Revised Code, the director of health shall approve courses of study for certification in food protection as it pertains to retail food establishments and as it pertains to food service operations. The director shall certify individuals in food protection who successfully complete a course of study approved under this section and meet all other certification requirements specified in rules adopted by the public health council under section ~~3732.02~~ 3717.51 of the

Revised Code.

~~Sec. 3732.09~~ 3717.11. (A) ~~The director of health shall survey the~~ Each board of health ~~of each city or general health district, or the authority having the duties of a board of health under section 3709.05 of the Revised Code, that licenses or proposes to license food service operations shall be surveyed for the purpose of determining whether the board or authority is qualified and has the capacity to administer and enforce this chapter and the rules adopted under it and to abide by the Ohio uniform food safety code~~ Each ~~If the board licenses or proposes to license retail food establishments, the survey shall be conducted by the director of agriculture. If the board licenses or proposes to license food service operations, the survey shall be conducted by the director of health.~~

Each board or authority shall be surveyed by each director at least once every three years. Surveys shall be conducted in accordance with rules adopted by the director under section 3732.13 sections 3717.33 and 3717.52 of the Revised Code, as applicable. The directors shall schedule and conduct their surveys in a manner that minimizes, to the extent practicable, intrusion on and inconvenience to the board.

~~If the director determines~~ A survey demonstrates that the board or authority is qualified and has the requisite capacity, the director conducting the survey shall approve # the board as the licensor of retail food establishments or food service operations, whichever is being considered, for the district # the board serves. If the director determines a survey demonstrates that a board or authority is not qualified or does not have the requisite capacity, the director conducting the survey shall not approve # the board as a licensor, or shall revoke the director's approval, whichever is appropriate. If the The board may appeal the decision to deny or revoke approval to the director taking the action. The appeal shall be conducted in accordance with rules adopted under section 3717.33 or 3717.52 of the Revised Code, as applicable.

If approval is not granted denied or is revoked, the director taking the action shall designate an alternative licensor for the district. The alternative licensor shall be a board of health that is qualified and has the requisite capacity to serve as alternative licensor, except that if a qualified and capable board is not available from a health district within reasonable proximity, the director that denied or revoked the board's approval shall act as the alternative licensor for the district or designate an alternative licensor to act as the licensor for the district.

(B) ~~When the director revokes the approval of a board or authority is revoked, all valid food service operation licenses issued by that board or~~

~~thority for retail food establishments or food service operations, whichever have been affected, shall be treated as though issued by the director or the alternative licensor, whichever is acting as the licensor for the district, and. The licenses shall remain valid until scheduled to expire unless earlier suspended or revoked by the director or alternative licensor under section 3732.11 of the Revised Code.~~

(C) All fees charged under section ~~3732.04~~ 3717.25 or 3717.45 of the Revised Code that have not been expended by a board ~~or authority~~ that has had its approval revoked shall be transferred to the alternative licensor ~~or to the director, whichever is appropriate.~~ An A board of health acting as alternative licensor shall deposit the fees into a special fund it establishes for receipt of funds pertaining to the district for which it is acting as licensor. If the director of agriculture is acting as licensor, the director shall deposit the fees in the food safety fund created in section 915.24 of the Revised Code. If the director of health is acting as licensor, the director shall deposit the fees shall be deposited in the general operations fund created in section ~~3701.82~~ 3701.83 of the Revised Code. All fees charged in the district by the alternative licensor ~~or director~~ shall be deposited in the same manner. Moneys deposited under this division shall be used solely for the administration and enforcement of this chapter and the rules adopted under it in the district for which the alternative licensor ~~or the director~~ is acting as licensor.

(D)(1) A board ~~or authority~~ that has had its approval to act as a licensor revoked may submit a request to the director who revoked the approval to be reinstated as a licensor. The request shall be in writing and shall specify the corrective measures the board ~~or authority~~ has taken and a proposed plan of action to remedy any remaining causes of the revocation. The director may reinstate the board ~~or authority~~ as a licensor if all of the following occur:

(a) The board ~~or authority~~ pays or arranges to pay the alternative licensor or director, as applicable, for costs incurred in acting as licensor for the district and in transferring responsibility for the district to the board ~~or authority~~, if those costs exceed the moneys available under division (C) of this section for the district;

(b) The board ~~or authority~~ corrects all causes of the revocation;

(c) The alternative licensor ~~or director, as applicable~~, consents to the reinstatement.

(2) The reinstatement of a board ~~or authority~~ as a licensor shall be conducted in accordance with procedures established in rules adopted under this chapter by the director ~~under section 3732.13 of the Revised Code~~ who revoked the approval.

~~Sec. 3732.06~~ 3717.12. If all or part of the territory within a health district becomes subject to the jurisdiction of a different board of health ~~of a city or general health district or authority having the duties of a board of health under section 3709.05 of the Revised Code~~, all valid retail food establishment or food service operation licenses issued by the original board or authority of health shall be treated as though issued by the board ~~or authority of health~~ with jurisdiction over the territory and shall remain valid until scheduled to expire unless earlier suspended or revoked by the board ~~or authority under section 3732.11 of the Revised Code~~ this chapter.

~~Sec. 3732.10~~ 3717.13. A licensor may employ or enter into contracts with qualified persons and government entities to conduct inspections and to assist the licensor by performing routine services in the administration and enforcement of this chapter and the rules adopted under it.

Sec. 3717.21. Except as provided in section 3717.22 of the Revised Code, no person or government entity shall operate a retail food establishment without a license. A separate license is required for each retail food establishment that a person or government entity operates.

No person or government entity shall fail to comply with any other requirement of this chapter applicable to retail food establishments.

Sec. 3717.22. (A) The following are not retail food establishments:

(1) A food service operation licensed under this chapter, including a food service operation that provides the services of a retail food establishment pursuant to an endorsement issued under section 3717.44 of the Revised Code;

(2) An entity exempt under divisions (B)(1) to (9), (11), or (12) of section 3717.42 of the Revised Code from the requirement to be licensed as a food service operation and an entity exempt under division (B)(10) of that section if the entity is regulated by the department of agriculture as a wholesale food establishment under section 3715.021 of the Revised Code;

(3) A business or that portion of a business that is regulated by the federal government or the department of agriculture as a food manufacturing or food processing operation, including an operation or that portion of an operation regulated by the department of agriculture under Chapter 911., 913., 915., 917., 918., or 925. of the Revised Code.

(B) All of the following are exempt from the requirement to be licensed as a retail food establishment:

(1) An operation with commercially prepackaged foods that are not potentially hazardous and contained in displays of less than ten cubic feet;

(2) A storage facility of less than five hundred square feet containing prepackaged foods that are not potentially hazardous;



(3) A roadside market that offers only fresh fruits and fresh vegetables that are unprocessed;

(4) A nonprofit organization exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, that raises funds by selling displayed foods, if the foods are not potentially hazardous and the display is made for not more than seven consecutive days or more than fifty-two separate days during a licensing period.

Sec. 3717.23. (A) Each person or government entity seeking a retail food establishment license or the renewal of a license shall apply to the appropriate licensor on a form provided by the licensor. A licensor shall use a form prescribed and furnished to the licensor by the director of agriculture or a form prescribed by the licensor that has been approved by the director. The applicant shall include with the application all information necessary for the licensor to process the application, as requested by the licensor.

An application for a retail food establishment license shall be submitted to the licensor for the health district in which the retail food establishment is located.

(B) The licensor shall review all applications received. The licensor shall issue a license for a new retail food establishment when the applicant submits a complete application and the licensor determines that the applicant meets all other requirements of this chapter and the rules adopted under it for receiving the license. The licensor shall issue a renewed license on receipt of a complete renewal application.

The licensor shall issue licenses for retail food establishments on forms prescribed and furnished by the director of agriculture.

(C)(1) A retail food establishment license expires at the end of the licensing period for which the license is issued, except as follows:

(a) A license issued to a new retail food establishment after the first day of December does not expire until the end of the licensing period next succeeding issuance of the license.

(b) A temporary retail food establishment license expires at the end of the period for which it is issued.

(2) All retail food establishment licenses remain valid until scheduled to expire unless earlier suspended or revoked under section 3717.29 or 3717.30 of the Revised Code.

(D) A retail food establishment license may be renewed, except that a temporary retail food establishment license is not renewable. A person or government entity seeking license renewal shall submit an application for renewal to the licensor not later than the first day of March, except in the

case of a seasonal retail food establishment, when the renewal application shall be submitted before commencing operation in a new licensing period. A licensor may renew a license prior to the first day of March, but not before the first day of February immediately preceding the licensing period for which the license is being renewed.

If a person or government entity does not file a renewal application with the licensor postmarked on or before the first day of March or, in the case of a seasonal retail food establishment, the first day of operation in a new licensing period, the licensor shall assess a penalty of twenty-five per cent of the fee charged for renewing the license, if the licensor charges renewal fees. If an applicant is subject to a penalty, the licensor shall not renew the license until the applicant pays the penalty.

(E)(1) A licensor may issue not more than ten temporary retail food establishment licenses per licensing period to the same person or government entity to operate at different events within the licensor's jurisdiction. For each particular event, a licensor may issue only one temporary retail food establishment license to the same person or government entity.

(2) A licensor may issue a temporary retail food establishment license to operate for more than five consecutive days if both of the following apply:

(a) The establishment will be operated at an event organized by a county agricultural society or independent agricultural society organized under Chapter 1711. of the Revised Code.

(b) The person who will receive the license is a resident of the county or one of the counties for which the agricultural society was organized.

(3) A person may be granted only one temporary retail food establishment license per licensing period pursuant to division (E)(2) of this section.

(E) The licensor may place restrictions or conditions on a retail food establishment license, based on the equipment or facilities of the establishment, limiting the types of food that may be stored, processed, prepared, manufactured, or otherwise held or handled for retail sale.

(G) The person or government entity holding a license for a retail food establishment shall display the license for that retail food establishment at all times at the licensed location.

(H) With the assistance of the department of agriculture, the licensor, to the extent practicable, shall computerize the process for licensing retail food establishments.

Sec. 3717.24. (A) The person or government entity holding a license for a retail food establishment may provide the services of a food service

operation within the retail food establishment without obtaining a food service operation license if the person or entity has received from the licensor of retail food establishments an endorsement to provide the services of a food service operation.

(B) When the activities of a retail food establishment and a food service operation are carried on within the same facility by the same person or government entity, the determination of whether the person or entity must be licensed as a retail food establishment or food service operation shall be made according to the primary business of the person or entity. If the primary business is that of a retail food establishment, the person or entity shall be licensed as a retail food establishment operation with an endorsement from the licensor issued under this section to provide the services of a food service operation. If the primary business is that of a food service operation, the person or entity shall be licensed as a food service operation and is subject to the endorsement provisions of section 3717.44 of the Revised Code.

The licensor of retail food establishments and food service operations for the area in which a facility is located shall make the determination of whether the primary business carried on within a facility is that of a retail food establishment or food service operation. If the licensor of retail food establishments for the area is not the same as the licensor of food service operations, the determination shall be made jointly by both licensors. Each determination shall be made according to criteria specified in the Ohio uniform food safety code.

(C) A request to have a retail food establishment license include an endorsement may be submitted with an application for issuance or renewal of a retail food establishment or may be submitted separately. Procedures for making separate requests shall be the same as the license application procedures established under section 3717.23 of the Revised Code.

An endorsement may be suspended or revoked in the same manner as a license may be suspended or revoked under section 3717.29 or 3717.30 of the Revised Code. The suspension or revocation of an endorsement does not affect the retail food establishment license that includes the endorsement. If the retail food establishment license is suspended or revoked, the endorsement included on the license is also suspended or revoked.

(D) If a food service operation is operated within a retail food establishment by a person or government entity other than the person or entity holding the license to operate the retail food establishment, the food service operation may not be operated under an endorsement issued under this section. The operation shall be licensed as a separate food service

operation.

Sec. 3717.25. (A) A licensor may charge fees for issuing and renewing retail food establishment licenses. Any licensing fee charged shall be used solely for the administration and enforcement of the provisions of this chapter and the rules adopted under it applicable to retail food establishments.

Any licensing fee charged under this section shall be based on the licensor's costs of regulating retail food establishments, as determined according to the uniform methodologies established under section 3717.07 of the Revised Code. If the licensor is a board of health, a fee may be disapproved by the district advisory council in the case of a general health district or the legislative authority of the city in the case of a city health district. A disapproved fee shall not be charged by the board of health.

At least thirty days prior to establishing a licensing fee, the licensor shall hold a public hearing regarding the proposed fee. At least thirty days prior to the public hearing, the licensor shall give written notice of the hearing to each person or government entity holding a retail food establishment license that may be affected by the proposed fee. The notice shall be mailed to the last known address of the licensee and shall specify the date, time, and place of the hearing and the amount of the proposed fee. On request, the licensor shall provide the completed uniform methodology used in the calculation of the licensor's costs and the proposed fee.

(B) In addition to licensing fees, a licensor may charge fees for any of the following:

(1) Review of facility layout and equipment specifications pertaining to retail food establishments;

(2) Any necessary collection and bacteriological examination of samples from retail food establishments or similar services specified in rules adopted under this chapter by the director of agriculture;

(3) Attendance at a course of study offered by the licensor in food protection as it pertains to retail food establishments, if the course is approved under section 3717.09 of the Revised Code.

(C) The director may determine by rule an amount to be collected from applicants for retail food establishment licenses for use by the director in administering and enforcing the provisions of this chapter and the rules adopted under it applicable to retail food establishments. Licensors shall collect the amount prior to issuing an applicant's new or renewed license. If a licensing fee is charged under this section, the licensor shall collect the amount at the same time the fee is collected. Licensors are not required to provide notice or hold public hearings regarding amounts collected under

this division.

Not later than sixty days after the last day of the month in which a license is issued, the licensor shall certify the amount collected under this division and transmit the amount to the treasurer of state. All amounts received shall be deposited into the food safety fund created in section 915.24 of the Revised Code. The director shall use the amounts solely for the administration and enforcement of the provisions of this chapter and the rules adopted under it applicable to retail food establishments.

When adopting rules regarding the amounts collected under this division, the director shall make available during the rule making process the current and projected expenses of administering and enforcing the provisions of this chapter and the rules adopted under it applicable to retail food establishments and the total of all amounts that have been deposited in the food safety fund pursuant to this division.

Sec. 3717.26. (A) A licensor may transfer a retail food establishment license under either of the following circumstances:

- (1) The sale or disposition of the retail food establishment;
- (2) The relocation of the retail food establishment.

(B) A person or government entity may request to receive a retail food establishment license by transfer. A licensor may transfer a license only on determining that the person or government entity requesting the transfer is in compliance with the provisions of this chapter and the rules adopted under it applicable to retail food establishments. In the case of the sale or disposition of a retail food establishment, the licensor may transfer a license only if the licensee consents to the transfer. A licensor may not transfer a license more than once in a licensing period. A license for a temporary retail food establishment is not transferable.

Sec. 3717.27. (A) All inspections of retail food establishments conducted by a licensor under this chapter shall be conducted according to the procedures and schedule of frequency specified in rules adopted under section 3717.33 of the Revised Code. An inspection may be performed only by an individual registered as a sanitarian or sanitarian-in-training under Chapter 4736. of the Revised Code. Each inspection shall be recorded on a form prescribed and furnished by the director of agriculture or a form approved by the director that has been prescribed by a board of health acting as licensor. With the assistance of the director, a board acting as licensor, to the extent practicable, shall computerize the inspection process and standardize the manner in which its inspections are conducted.

(B) A person or government entity holding a retail food establishment license shall permit the licensor to inspect the retail food establishment for

purposes of determining compliance with this chapter and the rules adopted under it or investigating a complaint concerning the establishment. On request of the licensor, the licensee shall permit the licensor to examine the records of the retail food establishment to obtain information about the purchase, receipt, or use of food, supplies, and equipment.

(C) An inspection may include the following:

(1) An investigation to determine the identity and source of a particular food;

(2) Removal from use of any equipment, utensils, hand tools, or parts of facilities found to be maintained in a condition that presents a clear and present danger to the public health.

Sec. 3717.28. Trade secrets and other forms of information that under this chapter are required to be furnished to or are procured by a licensor of retail food establishments shall be for the exclusive use and information of the licensor in the discharge of the licensor's official duties. The information shall not be open to the public or used in any action or proceeding in any court. If the licensor is a board of health, the board may share the information with the director of agriculture and director of health if the licensor is the director of agriculture, the director may share the information with the director of health.

The licensor shall maintain the confidentiality of the information, except that the information may be consolidated in statistical tables and published by the licensor in statistical form for the use and information of state and local agencies and the public, if the statistics do not disclose details about a particular person or government entity that provided information to the licensor. An individual employed by the licensor or assisting the licensor in the administration of the retail food establishment licensing requirements of this chapter shall not willfully divulge any information that is confidential under this section to any person or government entity other than the licensor or the individual's superior.

Sec. 3717.29. (A) This section applies when the licensor of retail food establishments is a board of health.

(B) A board of health may suspend or revoke a retail food establishment license on determining that the license holder is in violation of any requirement of this chapter or the rules adopted under it applicable to retail food establishments, including a violation evidenced by documented failure to maintain sanitary conditions within the establishment.

(C)(1) Except in the case of a violation that presents a clear and present danger to the public health, before initiating action to suspend or revoke a retail food establishment license, the board shall give the license holder

written notice specifying each violation and a reasonable time within which the license holder must correct each violation to avoid suspension or revocation of the license. The board may extend the time specified in the notice for correcting a violation if the license holder is making a good faith effort to correct it.

If the license holder fails to correct the violation in the time granted by the board, the board may initiate action to suspend or revoke the retail food establishment license by giving the license holder written notice of the proposed suspension or revocation. The board shall include in the notice a description of the procedure for appealing the proposed suspension or revocation. The license holder may appeal the proposed suspension or revocation by giving written notice to the board. The license holder shall specify in the notice whether a hearing is requested. The appeal shall be conducted in accordance with division (C)(3) of this section.

A health commissioner or other person employed by the board, if the health commissioner or person is authorized by the board to take the action, may take any action that the board may take under division (C)(1) of this section.

(2) If a board initiates actions to revoke or, except in the case of a violation that presents a clear and present danger to the public health, to suspend a retail food establishment license, the board shall determine whether to revoke or suspend the license by a majority vote of the board members who are present at a meeting at which there is a quorum.

If the board decides to revoke or suspend the license, the board shall issue a formal written order revoking or suspending the license.

(3) An appeal made under division (C)(1) of this section shall be conducted in accordance with procedures established in rules adopted by the director of agriculture under section 3717.33 of the Revised Code. If a license holder requests a hearing, the board shall hold the hearing before issuing an order under division (C)(2) of this section but may hold the hearing at the same meeting at which issuance of the order is considered.

(D)(1) On determining that a license holder is in violation of any requirement of this chapter or the rules adopted under it applicable to retail food establishments and that the violation presents a clear and present danger to the public health, the board may suspend the retail food establishment license without giving written notice or affording the license holder the opportunity to correct the violation.

A suspension under division (D)(1) of this section takes effect immediately and remains in effect until the board rescinds the suspension.

ensor shall give the license holder written notice of the procedure for appealing the suspension. The license holder may appeal the suspension by giving written notice to the board and specifying in the notice whether a hearing is requested. The appeal shall be conducted in accordance with division (D)(2) of this section.

A health commissioner, if authorized by the board to take the action, may take any action that may be taken by the board under division (D)(1) of this section. A health commissioner who suspends a license under this authority, on determining that there is no longer a clear and present danger to the public health, may rescind the suspension without consulting the board.

(2) If the license holder appeals a suspension under division (D)(1) of this section, the board shall determine whether the clear and present danger to the public health continues to exist by majority vote of the board members who are present at a meeting at which there is a quorum.

If the board determines that there is no longer a clear and present danger to the public health, the board shall rescind the suspension. If the board determines that the clear and present danger continues to exist, the board shall issue an order continuing the suspension.

(3) An appeal requested under division (D)(1) of this section shall be conducted in accordance with procedures established in rules adopted by the director of agriculture under section 3717.33 of the Revised Code. If the license holder requests a hearing, the board shall hold the hearing not later than two business days after the board receives the request. The board shall hold the hearing before issuing an order under division (D)(2) of this section but may conduct the hearing at the same meeting at which issuance of the order is considered.

(E) A license holder may appeal an order issued under division (C) or (D) of this section to the common pleas court of the county in which the licensor is located.

Sec. 3717.30. (A) This section applies when the licensor of retail food establishments is the director of agriculture.

(B) The director of agriculture may suspend or revoke a retail food establishment license on determining that a license holder is in violation of the provisions of this chapter or the rules adopted under it pertaining to retail food establishments, including a violation evidenced by documented failure to maintain sanitary conditions within the establishment. Except as provided in division (C)(9) of this section, the suspension or revocation of a license is not effective until the license holder is given written notice of the violation, a reasonable amount of time to correct the violation, and an opportunity for



a hearing.

(C) All actions and proceedings undertaken pursuant to this section shall comply with Chapter 119. of the Revised Code, except as follows:

(1) The location of any adjudicatory hearing that the license holder requests shall be the director's offices in Licking county.

(2) The director shall notify a license holder by certified mail or personal delivery that the license holder is conditionally entitled to a hearing. The director shall specify in the notice that, in order to obtain a hearing, the license holder must request the hearing not later than ten days after the date of receipt of the notice.

(3) If the license holder requests a hearing, the date set for the hearing shall be not later than ten days after the date on which the director receives the request, unless the director and the license holder agree otherwise.

(4) The director shall not postpone or continue an adjudication hearing without the consent of the license holder. If the license holder requests a postponement or continuation of an adjudication hearing, the director shall not grant it unless the license holder demonstrates that an extreme hardship will be incurred in holding the adjudication hearing on that hearing date. If the director grants a postponement or continuation on the grounds of extreme hardship, the record shall document the nature and cause of the extreme hardship.

(5) In lieu of having a hearing and upon the license holder's written request to the director, the license holder may submit to the director, not later than the date of the hearing set pursuant to division (C)(3) of this section, documents, papers, and other written evidence to support the license holder's claim.

(6) If the director appoints a referee or examiner to conduct the hearing, the following apply:

(a) A copy of the written adjudication report and recommendations of the referee or examiner shall be served by certified mail upon the director and the license holder not later than three business days following the conclusion of the hearing.

(b) Not later than three business days after receipt of the report and recommendations, the license holder may file with the director written objections to the report and recommendations.

(c) The director shall consider the objections submitted by the license holder before approving, modifying, or disapproving the report and recommendations. The director shall serve the director's order upon the license holder by certified mail not later than six business days after receiving the report and recommendations.

(7) If the director conducts the hearing, the director shall serve the director's decision by certified mail upon the license holder not later than three business days following the close of the hearing.

(8) If no hearing is held, the director shall issue an order by certified mail to the license holder not later than three business days following the last date possible for a hearing, based on the record that is available.

(9) If the director determines that an emergency exists that presents a clear and present danger to the public health, the director may suspend a license, effective without a hearing. Thereafter, without delay, the director shall afford the license holder an opportunity for hearing. On determining that there is no longer a clear and present danger to the public health, the director may rescind the suspension without a hearing.

Sec. 3717.31. (A) This section applies when the licenser of retail food establishments is a board of health.

As used in this section, "prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(B) At the request of the board of health, the prosecutor with jurisdiction in the area where a person allegedly has violated section 3717.21 of the Revised Code shall commence a criminal prosecution against the person.

At the request of a board of health, the director of agriculture shall provide enforcement support to assist in the prosecution of a person who is not in compliance with the provisions of this chapter and the rules adopted under it applicable to retail food establishments. Requests shall be made and assistance shall be provided in accordance with rules adopted by the director of agriculture under section 3717.33 of the Revised Code.

(C) At the request of the board of health, the prosecutor with jurisdiction in the area where a person or government entity allegedly has failed to comply with a requirement of this chapter or the rules adopted under it applicable to retail food establishments shall commence in common pleas court an action requesting the issuance of a temporary restraining order or a preliminary or permanent injunction or a mandamus action regarding the act of noncompliance. The court may grant the appropriate relief if it is shown that the respondent failed to comply with the requirement.

Notwithstanding the penalties established in section 2705.05 of the Revised Code, a person or government entity found to be in contempt of court for failing to comply with a restraining order, injunction, or writ of mandamus issued pursuant to this division shall be fined not more than one thousand dollars for each offense. Each day the noncompliance continues is a separate offense.

(D) Fifty per cent of all fines collected under this section shall be

deposited in an appropriate fund created for the board's use in administering the provisions of this chapter and the rules adopted under it applicable to retail food establishments. The remaining fifty per cent shall be credited to the general fund of the political subdivision in which the case is prosecuted.

(E) The remedies available under this section are in addition to any other remedies available under the law.

Sec. 3717.32. (A) This section applies when the licensor of retail food establishments is the director of agriculture.

(B) In addition to other remedies provided by law and irrespective of whether an adequate remedy at law exists, the director of agriculture may apply to the court of common pleas for a temporary or permanent injunction or other appropriate relief concerning the violation of a provision of this chapter or the rules adopted under it pertaining to retail food establishments. Application shall be made to the court in the county in which the violation occurs.

Notwithstanding the penalties established in section 2705.05 of the Revised Code, a person or government entity found to be in contempt of court for failing to comply with an injunction or other relief issued pursuant to this division shall be fined not more than one thousand dollars. Each day the noncompliance continues is a separate offense.

(C) Fifty per cent of all fines collected under this section shall be deposited into the state treasury to the credit of the food safety fund created in section 915.24 of the Revised Code. The remaining fifty per cent shall be credited to the general fund of the political subdivision in which the case is prosecuted.

Sec. 3717.33. Pursuant to section 3717.04 of the Revised Code, the director of agriculture shall adopt rules regarding the following:

(A) Licensing categories for retail food establishments and licensing requirements for each category, including appropriate practices for the activities performed by a retail food establishment;

(B) Standards for collection of food samples from retail food establishments for purposes of identifying adulteration and misbranding;

(C) Records to be generated and maintained by licensed retail food establishments;

(D) Appeals of proposed suspensions and revocations of retail food establishment licenses and appeals of suspensions of licenses issued for violations presenting a clear and present danger to the public health;

(E) Standards and procedures, including a schedule of frequency, for conducting inspections of retail food establishments;

(F) Standards and procedures for determining during an inspection

whether articles should be removed from use because of a clear and present danger to the public health;

(G) Standards and procedures for conducting investigations of complaints pertaining to retail food establishments;

(H) Surveys conducted by the director to determine whether boards of health are qualified and have the capacity to administer and enforce the provisions of this chapter and the rules adopted under it applicable to retail food establishments and to abide by the Ohio uniform food safety code;

(I) Reinstatement of a board of health as a licenser after the director has revoked the approval of the board;

(J) Procedures for resolving disputes between licensers and the holders of licenses for retail food establishments;

(K) procedures for providing enforcement support to a board of health requesting assistance in the prosecution of a person for a violation of the provisions of this chapter applicable to retail food establishments;

(L) Any other matter the director considers relevant to the administration and enforcement of the provisions of this chapter applicable to retail food establishments.

Sec. 3717.41. Except as provided in section 3717.42 of the Revised Code, no person or government entity shall operate a food service operation without a license. A separate license is required for each food service operation a person or government entity operates.

No person or government entity shall fail to comply with any other requirement of this chapter applicable to food service operations.

Sec. 3717.42. (A) The following are not food service operations:

(1) A retail food establishment licensed under this chapter, including a retail food establishment that provides the services of a food service operation pursuant to an endorsement issued under section 3717.44 of the Revised Code;

(2) An entity exempt from the requirement to be licensed as a retail food establishment under division (B) of section 3717.22 of the Revised Code;

(3) A business or that portion of a business that is regulated by the federal government or the department of agriculture as a food manufacturing or food processing operation, including an operation or that portion of an operation regulated by the department of agriculture under Chapter 911., 913., 915., 917., 918., or 925. of the Revised Code.

(B) All of the following are exempt from the requirement to be licensed as a food service operation:

(1) A private home in which individuals related by blood, marriage, or law reside and in which the food that is prepared or served is intended only

for those individuals and their nonpaying guests:

(2) A private home operated as a bed-and-breakfast that prepares and offers food to guests, if the home is owner-occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, and the number of guests served does not exceed sixteen;

(3) A stand operated on the premises of a private home by one or more children under the age of twelve, if the food served is not potentially hazardous;

(4) A residential facility that accommodates not more than sixteen residents; is licensed, certified, registered, or otherwise regulated by the federal government or by the state or a political subdivision of the state; and prepares food for or serves food to only the residents of the facility, the staff of the facility, and any nonpaying guests of residents or staff;

(5) A church, school, fraternal or veterans' organization, volunteer fire organization, or volunteer emergency medical service organization preparing or serving food intended for individual portion service on its premises for not more than seven consecutive days or not more than fifty-two separate days during a licensing period;

(6) A common carrier that prepares or serves food, if the carrier is regulated by the federal government;

(7) A food service operation serving five or fewer individuals daily;

(8) A type A or type B family day-care home, as defined in section 5104.01 of the Revised Code, that prepares or serves food for the children receiving day-care;

(9) A vending machine location where the only foods dispensed are foods from one or both of the following categories:

(a) Prepackaged foods that are not potentially hazardous;

(b) Nuts, panned or wrapped bulk chewing gum, or panned or wrapped bulk candies.

(10) A place servicing the vending machines at a vending machine location described in division (B)(9) of this section;

(11) A commissary servicing vending machines that dispense only milk, milk products, or frozen desserts that are under a state or federal inspection and analysis program;

(12) A "controlled location vending machine location," which means a vending machine location at which all of the following apply:

(a) The vending machines dispense only foods that are not potentially hazardous;

(b) The machines are designed to be filled and maintained in a sanitary manner by untrained persons;

(c) Minimal protection is necessary to ensure against contamination of food and equipment.

~~Sec. 3732.03 3717.43. (A) No person or government entity shall operate a food service operation without a license. A separate license is required for each food service operation that a person or government entity operates.~~

~~(B)~~ Each person or government entity requesting a food service operation license or the renewal of a license shall apply to the appropriate licensor on a form provided by the licensor. Licensors shall use a form prescribed and furnished to the licensor by the director of health or a form prescribed by the licensor that has been approved by the director. The applicant shall include with the application all information necessary for the licensor to process the application, as requested by the licensor.

Applications for food service operation licenses other than those for mobile and catering food service operation licenses shall be submitted to the licensor for the health district in which the food service operation is located. Applications for mobile food service operation licenses shall be submitted to the licensor for the health district in which the applicant's business headquarters are located, or, if the headquarters are located outside this state, to the licensor for the district where the applicant will first operate in this state. Applications for catering food service operation licenses shall be submitted to the licensor for the district where the applicant's base of operation is located.

~~(C) A~~ (B) The licensor shall review all applications received. The licensor shall issue a license for a new food service operation when the applicant submits a complete application and the licensor determines that the applicant meets all other requirements ~~for receiving the license in accordance with~~ of this chapter and the rules adopted under it ~~for receiving the license~~. The licensor shall issue a renewed license on receipt of a complete renewal application.

~~Licenses~~ The licensor shall be issued issue licenses for food service operations on forms prescribed and furnished by the director of health. If the license is for a mobile food service operation, the licensor shall post the operation's layout, equipment, and menu on the back of the license.

A mobile or catering food service operation license issued by one licensor shall be recognized by all other licensors in this state.

~~(C)(1)~~ A food service operation license other than a temporary food service operation license expires at the end of the licensing period for which the license is issued and may be renewed. A, except as follows:

(a) A license issued to a new food service operation after the first day of December shall not expire until the end of the licensing period next

succeeding issuance of the license.

~~(b) A temporary food service operation license expires at the end of the period for which it is issued and is not renewable. All~~

~~(2) All food service operation licenses remain valid until they are scheduled to expire unless earlier suspended or revoked under section 3732.11 3717.49 of the Revised Code.~~

~~A mobile or catering food service operation license issued by one licensor shall be recognized by all other licensors in this state.~~

~~(D) A food service operation license may be renewed, except that a temporary food service operation license is not renewable. Applications for renewal of food service operation licenses other than those for mobile and seasonal food service operation licenses shall be submitted to the licensor not later than the first day of March. Renewal applications for mobile and seasonal food service operation licenses shall be submitted prior to commencing operation in a new licensing period. A licensor may renew a license prior to the first day of March or the first day of operation in a new licensing period, but not before the first day of February immediately preceding the licensing period for which the license is being renewed.~~

If a renewal application is not filed with the licensor or postmarked on or before the first day of March or, in the case of a mobile or seasonal food service operation, the first day of operation in a new licensing period, the licensor shall assess a penalty of twenty-five per cent of the fee charged for renewing licenses, if the licensor charges renewal fees. If an applicant is subject to a penalty, the licensor shall not renew the license until the applicant pays the penalty.

~~(E)(1) Except as provided in division (E)(3) of this section, there is no limit on the number of temporary food service operation licenses a licensor may issue not more than ten temporary food service operation licenses per licensing period to a the same person or government entity to operate at different events within the licensor's jurisdiction. For each particular event, a licensor may issue only one temporary food service operation license for to the same operation person or government entity.~~

(2) A licensor may issue a temporary food service operation license to operate for more than five consecutive days if both of the following apply:

(a) The operation will be operated at an event organized by a county agricultural society or independent agricultural society organized under Chapter 1711. of the Revised Code;

(b) The person who will receive the license is a resident of the county or one of the counties for which the agricultural society was organized.

(3) A person may be granted only one temporary food service operation

license per licensing period pursuant to division (E)(2) of this section.

(F) The licensor may place restrictions or conditions on a food service operation license limiting the types of food that may be prepared or served by the ~~licensee~~ food service operation based on the equipment or facilities of the food service operation. Limitations pertaining to a mobile or catering food service operation shall be posted on the back of the license.

(G) ~~A licensee~~ The person or government entity holding a license for a food service operation shall display the license for that food service operation at all times at the licensed location. A ~~licensee~~ person or government entity holding a catering food service operation license shall also maintain a copy of the license at each catered event.

(H) With the assistance of the department of health, the licensor, to the extent practicable, shall computerize the process for licensing food service operations.

Sec. 3717.44. (A) The person or government entity holding a license for a food service operation may provide the services of a retail food establishment within the food service operation without obtaining a retail food establishment license if the person or entity has received from the licensor of food service operations an endorsement to provide the services of a retail food establishment.

(B) When the activities of a food service operation and a retail food establishment are carried on within the same facility by the same person or government entity, the determination of whether the person or entity must be licensed as a food service operation or retail food establishment shall be made according to the primary business of the person or entity. If the primary business is that of a food service operation, the person or entity shall be licensed as a food service operation with an endorsement from the licensor issued under this section to provide the services of a retail food establishment. If the primary business is that of a retail food establishment, the person or entity shall be licensed as a retail food establishment and is subject to the endorsement provisions of section 3717.24 of the Revised Code.

The licensor of food service operations and retail food establishments for the area in which a facility is located shall make the determination of whether the primary business carried on within a facility is that of a food service operation or retail food establishment. If the licensor of food service operations for the area is not the same as the licensor of retail food establishments, the determination shall be made jointly by both licensors. Each determination shall be made according to criteria specified in the Ohio uniform food safety code.



(C) A request to have a food service operation license include an endorsement may be submitted with an application for issuance or renewal of a food service operation license or may be submitted separately. Procedures for making separate requests shall be the same as the license application procedures established under section 3717.43 of the Revised Code.

An endorsement may be suspended or revoked in the same manner as a license may be suspended or revoked under section 3717.48 of the Revised Code. The suspension or revocation of an endorsement does not affect the food service operation license that includes the endorsement. If the food service operation license is suspended or revoked, the endorsement included on the license is also suspended or revoked.

(D) If a retail food establishment is operated within a food service operation by a person or government entity other than the person or entity holding the license to operate the food service operation, the retail food establishment may not be operated under an endorsement. The establishment shall be licensed as a separate retail food establishment.

~~Sec. 3732.04~~ 3717.45. (A) A licensor may charge fees for issuing and renewing food service operation licenses. Any licensing fee charged shall be established in accordance with ~~section 3709.09 of the Revised Code.~~ The fees shall be used solely for the administration and enforcement of the provisions of this chapter and the rules adopted under it applicable to food service operations.

~~(B) At~~ Any licensing fee charged under this section shall be based on the licensor's costs of regulating food service operations, as determined according to the uniform methodologies established under section 3717.07 of the Revised Code. If the licensor is a board of health, a fee may be disapproved by the district advisory council in the case of a general health district or the legislative authority of the city in the case of a city health district. A disapproved fee shall not be charged by the board of health.

At least thirty days prior to establishing a licensing fee, the licensor shall hold a public hearing regarding the proposed fee. At least thirty days prior to the public hearing, the licensor shall give written notice of the hearing to each ~~licensee~~ person or government entity holding a food service operation license that may be affected by the proposed fee. The notice shall be mailed to the last known address of the licensee and shall specify the date, time, and place of the hearing and the amount of the proposed fee. On request, the licensor shall provide the completed uniform methodology used in the calculation of the licensor's costs and the proposed fee.

~~(C)(B)~~ In addition to licensing fees, a licensor may charge fees for the

following:

(1) Review of facility layout and equipment specifications pertaining to food service operation plans operations, other than ~~plans pertaining to~~ mobile and temporary food service operations, or similar reviews conducted for vending machine locations;

(2) Any necessary collection and bacteriological examination of ~~water~~ samples from food service operations, or similar services specified in rules adopted under this chapter by the public health council;

(3) ~~Any necessary collection and bacteriological examination of frozen dessert samples taken from a frozen dessert dispensing freezer~~;

(4) ~~Attending Attendance~~ at a course of study ~~in food protection~~ offered by the licenser in food protection as it pertains to food service operations, if the course is approved under section ~~3732.14~~ 3717.09 of the Revised Code.

(D)(C) The public health council may determine by rule an amount to be collected from applicants for food service operation licenses for use by the director of health in administering and enforcing the provisions of this chapter and the rules adopted under it applicable to food service operations. Licensors shall collect the amount prior to issuing an applicant's new or renewed license. If a licensing fee is charged under this section, the licenser shall collect the amount at the same time the fee is collected. Licensors are not required to provide notice or hold public hearings regarding amounts collected under this division.

Not later than sixty days after the last day of the month in which a license is issued, the licenser shall certify the amount collected under this division and transmit the amount to the treasurer of state. All amounts received shall be deposited into the general operations fund created in section ~~3701.82~~ 3701.83 of the Revised Code ~~and shall be used by the~~. The director shall use the amounts solely for the administration and enforcement of the provisions of this chapter and the rules adopted under it applicable to food service operations.

The director may submit recommendations to the public health council regarding the amounts collected under this division. When making recommendations, the director shall submit a report stating the current and projected expenses of administering and enforcing the provisions of this chapter and the rules adopted under it applicable to food service operations and the total of all amounts that have been deposited in the general operations fund pursuant to this division. The director may include in the report any recommendations for modifying the department's administration and enforcement of the provisions of this chapter and the rules adopted under it applicable to food service operations.

Sec. ~~3732.05~~ 3717.46. (A) A food service operation license may be transferred by the licensor under either of the following circumstances:

- (1) The sale or disposition of the food service operation;
- (2) The relocation of the food service operation.

(B) A person or government entity may request to receive a food service operation license by transfer. A licensor may transfer a license only on determining that the person or government entity requesting the transfer is in compliance with the provisions of this chapter and the rules adopted under it applicable to food service operations. In the case of the sale or disposition of a food service operation, the license may not be transferred unless the licensee consents to the transfer. A license shall not be transferred more than once in a licensing period. Temporary food service operation licenses are not transferable.

Sec. ~~3732.08~~ 3717.47. (A) ~~As used in this section:~~

~~(1) "Critical control point inspection" means an inspection designed to identify and prevent food handling procedures that epidemiological data have shown to lead to outbreaks of foodborne disease.~~

~~(2) "Standard inspection" means an inspection designed to determine compliance with this chapter and the rules adopted under it.~~

~~(B) Licensors shall classify food service operations, other than vending machine locations and mobile and temporary food service operations, according to the factors contributing to foodborne disease identified in rules adopted by the public health council under section 3732.02 of the Revised Code. Food service operation classifications consist of "class I," "class II," and "class III," with class I representing the smallest risk of foodborne disease and class III the greatest risk.~~

~~(C)(1) A licensor shall inspect the food service operations in its district as follows:~~

~~(a) Class I: at least one standard inspection shall be conducted each licensing period;~~

~~(b) Class II: Except as provided in division (C)(3) of this section, at least two standard inspections shall be conducted each licensing period;~~

~~(c) Class III: Except as provided in division (C)(3) of this section, at least two standard inspections and one critical control point inspection shall be conducted each licensing period;~~

~~(d) Vending machine locations: at least one standard inspection of at least fifty per cent of the locations operated by a licensee shall be conducted each licensing period;~~

~~(e) Mobile food service operations: at least one standard inspection shall be conducted each licensing period;~~

~~(f) Temporary food service operations: at least one standard inspection shall be conducted during the period the operation is being operated;~~

~~(g) New food service operations: one standard inspection shall be conducted not later than thirty days after the license for the operation is issued.~~

~~(2) The licensor shall schedule the standard inspections required for class I and II food service operations, vending machine locations, and mobile food service operations so that not more than twelve months elapse between the standard inspections of a particular operation. The critical control point inspections required for class III food service operations shall be scheduled so that not more than twelve months elapse between the critical control point inspections of each operation.~~

~~(3) One of the standard inspections required for a class II or class III food service operation may be eliminated if either of the following is the case:~~

~~(a) A manager or other individual responsible on a regular basis for that operation is certified in food protection under section 3732.14 of the Revised Code;~~

~~(b) The operation is a seasonal food service operation.~~

~~(D) Standard and critical control point All inspections of food service operations conducted by a licensor under this chapter shall be conducted according to the procedures and schedule of frequency specified in rules adopted under section 3717.51 of the Revised Code. An inspection may be performed only by an individual registered as a sanitarian or sanitarian-in-training registered under Chapter 4736. of the Revised Code. Inspections Each inspection shall be recorded on a form prescribed and furnished by the director of health or a form prescribed by the licensor that has been approved by the director that has been prescribed by a board of health acting as licensor. With the assistance of the director, a board acting as licensor, to the extent practicable, shall computerize the inspection process and shall standardize the manner in which its inspections are conducted.~~

~~(E)(B) A licensee person or government entity holding a food service operation license shall permit the licensor to inspect a the food service operation for purposes of determining compliance with this chapter and the rules adopted under it or investigating a complaint regarding foodborne disease. Inspections and investigations shall be conducted at times determined by the licensor to be reasonable. On request, of the licensor, the license holder shall be permitted permit the licensor to examine the records of the food service operation to obtain information about the purchase,~~

receipt, or use of food, supplies, and equipment.

A licensor may inspect any mobile food service operation or catering food service operation being operated within the licensor's district. If an inspection of a mobile or catering food service operation is conducted by a licensor other than the licensor that issued the license for the operation, a report of the inspection shall be sent to the issuing licensor. The issuing licensor may use the inspection report to suspend or revoke the license under section ~~3732.14~~ 3717.49 of the Revised Code.

(C) An inspection may include an investigation to determine the identity and source of a particular food.

Sec. 3717.48. Trade secrets and other forms of information that, under this chapter, are required to be furnished to or are procured by a licensor of food service operations shall be for the exclusive use and information of the licensor in the discharge of the licensor's official duties. The information shall not be open to the public or used in any action or proceeding in any court. If the licensor is a board of health, the board may share the information with the director of health and director of agriculture. If the licensor is the director of health, the director may share the information with the director of agriculture.

The licensor shall maintain the confidentiality of the information, except that the information may be consolidated in statistical tables and published by the licensor in statistical form for the use and information of state and local agencies and the public, if the statistics do not disclose details about a particular person or government entity that provided information to the licensor. An individual employed by the licensor or assisting the licensor in the administration of the food service operation licensing requirements of this chapter shall not willfully divulge any information that is confidential under this section to any person or government entity other than the licensor or the individual's superior.

Sec. ~~3732.14~~ 3717.49. (A)(4) A licensor may suspend or revoke a food service operation license on determining that a ~~licensee~~ the license holder is in violation of any requirement of this chapter or the rules adopted under it applicable to food service operations, including a violation evidenced by the documented failure to maintain sanitary conditions within the operation  
~~Except~~

(B)(1) Except in the case of a violation that presents an immediate danger to the public health, prior to initiating action to suspend or revoke a food service operation license, the licensor shall give the ~~licensee~~ license holder written notice specifying each violation and a reasonable time within which each violation must be corrected to avoid suspension or revocation of

the ~~licensee's food service operation~~ license. The licensor may extend the time specified in the notice for correcting a violation if the ~~licensee~~ license holder is making a good faith effort to correct it.

If the ~~licensee~~ license holder fails to correct the violation in the time granted by the licensor, the licensor may initiate action to suspend or revoke the ~~licensee's food service operation~~ license by giving the ~~licensee~~ license holder written notice of the proposed suspension or revocation. The licensor shall include in the notice a description of the procedure for appealing the proposed suspension or revocation. The ~~licensee~~ license holder may appeal the proposed suspension or revocation by giving written notice to the licensor. The ~~licensee~~ license holder shall specify in the notice whether a hearing is requested. The appeal shall be conducted in accordance with division ~~(A)(B)~~(3) of this section.

Any action that may be taken by a licensor under division ~~(A)(B)~~(1) of this section may be taken by a health commissioner or other person employed by the licensor if the person or health commissioner is authorized by the licensor to take the action.

(2)(a) If actions are initiated to revoke or, except in the case of a violation that presents an immediate danger to the public health, to suspend a food service operation license, the licensor shall determine whether to revoke or suspend the license as follows:

(i) If the licensor is a board of health ~~of a city or general health district or the authority having the duties of a board of health under section 3709.05 of the Revised Code~~, by a majority vote of the members of the board ~~or authority~~ present at a meeting at which there is a quorum;

(ii) If the director of health is acting as the licensor ~~pursuant to section 3732.09 of the Revised Code~~, by decision of the director.

(b) If the licensor determines to revoke or suspend the license, the licensor shall issue an order revoking or suspending the license.

(3) An appeal made under division ~~(A)(B)~~(1) of this section shall be conducted in accordance with procedures established in rules adopted by the director of health under section ~~3732.13~~ 3717.52 of the Revised Code. If a hearing is requested, it shall be held prior to the issuance of an order under division ~~(A)(B)~~(2) of this section, but may be conducted at the meeting at which issuance of the order is considered.

~~(B)(C)~~(1) On determining that a ~~licensee~~ license holder is in violation of any requirement of this chapter or the rules adopted under it applicable to food service operations and that the violation presents an immediate danger to the public health, the licensor may suspend the ~~licensee's food service operation~~ license without giving written notice or affording the ~~licensee~~

license holder the opportunity to correct the violation. If the ~~licensee~~ license holder is operating a mobile or catering food service operation, either the licensor that issued the license or the licensor for the health district in which the operation is being operated may suspend the license.

A suspension under division ~~(B)(C)~~(1) of this section takes effect immediately and remains in effect until the licensor lifts the suspension. When a mobile food service operation license is suspended under this division, the licensor that suspended the license shall hold the license until the suspension is lifted and the licensor receives from the ~~licensee~~ license holder written notice of the next location at which the ~~licensee~~ license holder proposes to operate the food service operation.

After suspending a license under division ~~(B)(C)~~(1) of this section, the licensor shall give the ~~licensee~~ license holder written notice of the procedure for appealing the suspension. The ~~licensee~~ license holder may appeal the suspension by giving written notice to the licensor and specifying in the notice whether a hearing is requested. The appeal shall be conducted in accordance with division ~~(B)(C)~~(2) of this section.

Any action that may be taken by a licensor under division ~~(B)(C)~~(1) of this section may be taken by a health commissioner ~~or person employed by a city in a position comparable to that of health commissioner~~ if the ~~person or~~ health commissioner is authorized by the licensor to take the action. A ~~person or~~ health commissioner ~~that~~ who suspends a license under this authority may, on determining that there is no longer an immediate danger to the public health, lift the suspension without consulting the licensor.

(2)(a) If the ~~licensee~~ license holder appeals a suspension under division ~~(B)(C)~~(1) of this section, the licensor shall determine whether the immediate danger to the public health continues to exist as follows:

(i) If the licensor is a board of health ~~of a city or general health district or the authority having the duties of a board of health under section 3709.05 of the Revised Code~~, by majority vote of the members of the board ~~or authority~~ present at a meeting at which there is a quorum;

(ii) If the director of health is acting as the licensor ~~pursuant to section 3732.09 of the Revised Code~~, by decision of the director.

(b) If the licensor determines that there is no longer an immediate danger to the public health, the licensor shall lift the suspension. If the licensor determines that the immediate danger continues to exist, the licensor shall issue an order continuing the suspension.

(3) An appeal requested under division ~~(B)(C)~~(1) of this section shall be conducted in accordance with procedures established in rules adopted by the director of health under section ~~3732.13~~ 3717.52 of the Revised Code. If a

hearing is requested, it shall be held not later than two business days after the request is received by the licensor. The hearing shall be held prior to the issuance of an order under division ~~(B)~~(C)(2) of this section, but may be conducted at the meeting at which issuance of the order is considered. In the case of a suspension of a mobile or catering food service operation license, the appeal shall be made to the licensor that suspended the license.

~~(C)~~(D) A ~~licensee~~ license holder may appeal an order issued under division ~~(A)~~(B) or ~~(B)~~(C) of this section as follows:

(1) If the order was issued by a board of health ~~of a city or general health district or the authority having the duties of a board of health under section 3709.05 of the Revised Code~~, to the common pleas court of the county in which the licensor is located;

(2) If the order was issued by the director of health, to the Franklin county court of common pleas.

Sec. ~~3732.12~~ 3717.50. (A) As used in this section, "prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

~~(B) No person shall fail to comply with any requirement of this chapter.~~

~~(C)~~ At the request of the licensor, ~~the attorney general or the prosecutor with jurisdiction in the area where~~ when a person allegedly has violated ~~division (B) of this section shall commence~~ 3717.41 of the Revised Code, a criminal prosecution shall be commenced against the person. If the licensor is the director of health, the prosecution shall be commenced by the attorney general. If the licensor is a board of health, the prosecution shall be commenced by the prosecutor with jurisdiction in the area where the alleged violation occurred.

At the request of a board of health acting as licensor, the director of health shall provide enforcement support to assist in the prosecution of a person who is not in compliance with the provisions of this chapter and the rules adopted under it applicable to food service operations. Requests shall be made and assistance shall be provided in accordance with rules adopted by the director of health under section 3717.52 of the Revised Code.

~~(D)~~(C) At the request of the licensor, the attorney general or the prosecutor with jurisdiction in the area where a person or government entity allegedly has failed to comply with a requirement of this chapter or the rules adopted under it applicable to food service operations shall commence in common pleas court an action requesting the issuance of a temporary restraining order or a preliminary or permanent injunction or a mandamus action regarding the act of noncompliance. The court may grant the appropriate relief ~~on a showing~~ if it is shown that the respondent failed to comply with the requirement.



Notwithstanding the penalties established in section 2705.05 of the Revised Code, a person or government entity found to be in contempt of court for failing to comply with a restraining order, injunction, or writ of mandamus issued pursuant to this division shall be fined not more than one thousand dollars for each offense. Each day the noncompliance continues is a separate offense.

(D) Of the fines collected under this section, if the licensor is a board of health, fifty per cent shall be deposited in an appropriate fund created for the board's use in administering the provisions of this chapter and the rules adopted under it applicable to food service operations; if the licensor is the director of health, fifty per cent shall be deposited in the general operations fund created under section 3701.83 of the Revised Code. The remaining fifty per cent shall be credited to the general fund of the political subdivision in which the case is prosecuted.

(E) The remedies available under this section are in addition to any other remedies available under the law.

~~Sec. 3732.02 3717.51. (A) The Pursuant to section 3717.04 of the Revised Code, the public health council shall adopt, and has the exclusive power to adopt, rules of uniform application throughout this state regarding the following food service operations, as follows:~~

~~(1)(A) Licensing categories for food service operations and licensing requirements for each category;~~

~~(2) Identification of factors contributing to foodborne disease for use in classifying food service operations under section 3732.08 of the Revised Code;~~

~~(3) Criteria for food service operation equipment, including refrigerated bulk milk dispensers;~~

~~(4) Standards for sanitation;~~

~~(5) Criteria for approving plans for food service operations;~~

~~(6) A definition of "potentially hazardous" as it applies to food;~~

~~(7) Procedures and criteria to be used by the director of health in approving courses of study for certification in food protection under section 3732.14 of the Revised Code;~~

~~(8) Requirements an individual must meet to become certified in food protection;~~

(9)(B) Standards and procedures, including a schedule of frequency, for conducting inspections of food service operations;

(C) Standards and procedures for conducting investigations of complaints pertaining to food service operations;

(D) Procedures to be used by the director of health in approving courses

of study for persons seeking certification in food protection, standards that must be met to receive and maintain the director's approval, and procedures for withdrawing the director's approval of a course if the standards for approval are no longer being met;

~~(E)~~ Standards for the provision of assistance to choking victims;

~~(10)(F)~~ Any other matter the council considers relevant to the administration and enforcement of the provisions of this chapter applicable to food service operations.

~~(B) The public health council may adopt rules establishing the number, composition, terms of office, and functions of any food service advisory board the director establishes pursuant to section 121.13 of the Revised Code.~~

~~(C) All rules adopted under this section shall be adopted in accordance with Chapter 119. of the Revised Code.~~

Sec. ~~3732.13~~ 3717.52. ~~(A) The~~ Pursuant to section 3717.04 of the Revised Code, the director of health shall adopt rules establishing procedures for the following:

~~(1)(A)~~ Appeals of proposed suspension or revocation of food service operation licenses and appeals of suspension of licenses issued for violations presenting immediate danger to the public health;

~~(2)(B)~~ Surveys conducted by the director to determine whether boards of health of city or general health districts or authorities having the duties of a board of health under section 3709.05 of the Revised Code are qualified and have the capacity to administer and enforce the provisions of this chapter and the rules adopted under it applicable to food service operations and to abide by the Ohio uniform food safety code;

~~(3)(C)~~ Reinstatement of a board or authority of health as a licenser after the director has revoked the approval of the board or authority;

~~(D)~~ Procedures for providing enforcement support to a board of health requesting assistance in the prosecution of a person for a violation of the provisions of this chapter applicable to food service operations;

~~(E)~~ Procedures for resolving disputes between licensers and the holders of licenses for food service operations.

~~(B) All rules adopted under this section shall be adopted in accordance with Chapter 119. of the Revised Code.~~

Sec. ~~3732.99~~ 3717.99. Whoever violates ~~division (B) of section 3732.12~~ 3717.21 or 3717.41 of the Revised Code is guilty of a misdemeanor of the third degree on a first offense; for a second offense or subsequent offense, such person is guilty of a misdemeanor of the second degree. Each day the violation continues is a separate offense.

Sec. 3724.03. (A) Application for a license to operate a community alternative home shall be made by the operator to the director of health on forms provided by the director. After investigating the application and inspecting the home, the director shall issue a license if ~~he~~ the director determines that the following requirements have been met:

(1) The home is in compliance with this chapter and rules adopted by the public health council under section 3724.05 of the Revised Code.

(2) The home meets the fire safety standards established by rules adopted under section 3724.05 of the Revised Code and has been inspected and approved by a certified electrical safety inspector.

(3) The home complies with local zoning regulations.

(4) If applicable, the home has a valid food service license issued under Chapter ~~3732~~ 3717 of the Revised Code.

(5) The operator has not been convicted of a felony or a crime involving moral turpitude.

(6) The operator has provided all documentation requested by the director.

(7) The operator has developed policies for infection control and for educating caregivers about acquired immunodeficiency syndrome.

(8) The operator has paid the license fee established by rule of the public health council under section 3724.05 of the Revised Code.

At the request of the operator on a form furnished by the director, the director, in accordance with rules adopted by the public health council, may waive any licensing requirement established by rule of the council if ~~he~~ the director determines that strict application of the requirement would cause undue hardship to the home and that the grant of a waiver would not jeopardize the health and safety of any resident of the home. The waiver may be granted at the time of initial licensing or renewal or during a licensing period and may be temporary or permanent.

The license shall contain the name and address of the home for which it is issued, the date of expiration of the license, and the maximum number of residents that may be accommodated by the home. A license is valid for two years from the date of issuance.

Sections 3781.06 to 3781.18 and 3791.04 of the Revised Code and building standards adopted pursuant to those sections do not apply to any structure for which application is made for licensure as a community alternative home unless the license is denied.

(B) The director may issue a temporary license pending completion of the licensing inspection if the application and documentation meet the requirements of this chapter and the rules adopted by the public health

council. A temporary license is valid for ninety days and may be renewed for an additional ninety days. The director also may renew a temporary license for the duration of proceedings under Chapter 119. of the Revised Code regarding the denial of a license if ~~he~~ the director determines that the continued operation of the home will not jeopardize the health or safety of the residents.

(C) Application for renewal of a license to operate a community alternative home shall be made by the operator to the director of health on forms provided by the director. In addition to submitting the application and a fee in the amount established by rules of the public health council, the operator shall inform the director of any changes in the ownership or structure of the buildings housing the home. If the electrical wiring has been altered, the operator shall submit proof that the alteration has been inspected and approved by a certified electrical safety inspector. The director shall inspect the facility and shall renew the license if ~~he~~ the director determines that the home complies with the requirements of this chapter and the rules adopted by the public health council.

(D) In accordance with Chapter 119. of the Revised Code, the director may deny, revoke, or refuse to issue or renew a license or a temporary license for any community alternative home that fails to comply with any requirement of this chapter or with any rules adopted by the public health council.

Sec. 4303.021. Permit A-1-A may be issued to the holder of an A-1 or A-2 permit to sell beer and any intoxicating liquor at retail, only by the individual drink in glass or from a container, provided such A-1-A permit premises are situated on the same parcel or tract of land as the related A-1 or A-2 manufacturing permit premises or are separated therefrom only by public streets or highways or by other lands owned by the holder of the A-1 or A-2 permit and used by the holder in connection with or in promotion of the holder's A-1 or A-2 permit business. The fee for this permit is three thousand one hundred twenty-five dollars. The holder of an A-1-A permit may sell beer and any intoxicating liquor during the same hours as the holders of D-5 permits under this chapter or Chapter 4301. of the Revised Code or the rules of the liquor control commission and shall obtain a restaurant license pursuant to section ~~3732.03~~ 3717.43 of the Revised Code.

Except as otherwise provided in this section, no new A-1-A permit shall be issued to the holder of an A-1 or A-2 permit unless the sale of beer and intoxicating liquor under class D permits is permitted in the precinct in which the A-1 or A-2 permit is located and, in the case of an A-2 permit, unless the holder of the A-2 permit manufactures or has a storage capacity

f at least twenty-five thousand gallons of wine per year. The immediately preceding sentence does not prohibit the issuance of an A-1-A permit to an applicant for such a permit who is the holder of an A-1 permit and whose application was filed with the division of liquor control before June 1, 1994. The liquor control commission shall not restrict the number of A-1-A permits which may be located within a precinct.

Sec. 4303.13. Permit D-1 may be issued to the owner or operator of a hotel or restaurant licensed pursuant to section ~~3732.03~~ 3717.43 of the Revised Code, or of a club, amusement park, drugstore, lunch stand, boat, or vessel, and shall be issued to a person described in division (B) of this section, to sell beer at retail either in glass or container, for consumption on the premises where sold; and, except as otherwise provided in division (B) of this section, to sell beer at retail in other receptacles or in original containers having a capacity of not more than five and one-sixth gallons not for consumption on the premises where sold. The fee for this permit is one hundred eighty-eight dollars for each location, boat, or vessel.

Sec. 4303.14. Permit D-2 may be issued to the owner or operator of a hotel or restaurant licensed pursuant to section ~~3732.03~~ 3717.43 of the Revised Code, or of a club, boat, or vessel, to sell wine and prepared and bottled cocktails, cordials, and other mixed beverages manufactured and distributed by holders of A-4 and B-4 permits at retail, either in glass or container, for consumption on the premises where sold. The holder of such permit may also sell wine and prepared and bottled cocktails, cordials, and other mixed beverages in original packages and not for consumption on the premises where sold or for resale. The fee for this permit is two hundred eighty-two dollars for each location, boat, or vessel.

Sec. 4303.15. Permit D-3 may be issued to the owner or operator of a hotel or restaurant licensed pursuant to section ~~3732.03~~ 3717.43 of the Revised Code, or a club, boat, or vessel, to sell spirituous liquor at retail, only by the individual drink in glass or from the container, for consumption on the premises where sold. No sales of intoxicating liquor shall be made by a holder of a D-3 permit after one a.m. The fee for this permit is six hundred dollars for each location, boat, or vessel.

Sec. 4303.181. (A) Permit D-5a may be issued either to the owner or operator of a hotel or motel required to be licensed under section 3731.03 of the Revised Code containing at least fifty rooms for registered transient guests, and which qualifies under the other requirements of this section, or to the owner or operator of a restaurant specified under this section to sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold,

and to registered guests in their rooms, which may be sold by means of a controlled access alcohol and beverage cabinet in accordance with division (B) of section 4301.21 of the Revised Code; and to sell the same products in the same manner and amounts not for consumption on the premises as may be sold by holders of D-1 and D-2 permits. The premises of the hotel or motel shall include a restaurant licensed pursuant to section ~~3732.03~~ 3717.43 of the Revised Code affiliated with the hotel or motel and within or contiguous to the hotel or motel, serving food within the hotel or motel, but the principal business of the owner or operator of the hotel or motel shall be the accommodation of transient guests. In addition to the privileges authorized herein, the holder of a D-5a permit may exercise the same privileges as the holder of a D-5 permit.

The owner or operator of a hotel, motel, or restaurant who qualified for and held a D-5a permit on August 4, 1976, may, if the owner or operator held another permit before holding a D-5a permit, either retain a D-5a permit or apply for the permit formerly held, and the division of liquor control shall issue the permit for which the owner or operator applies and formerly held, notwithstanding any quota.

A D-5a permit shall not be transferred to another location. No quota restriction shall be placed on the number of such permits which may be issued.

The fee for this permit is one thousand eight hundred seventy-five dollars.

(B) Permit D-5b may be issued to the owner, operator, tenant, lessee, or occupant of an enclosed shopping center to sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold; and to sell the same products in the same manner and amount not for consumption on the premises as may be sold by holders of D-1 and D-2 permits. In addition to the privileges authorized in this section, the holder of a D-5b permit may exercise the same privileges as a holder of a D-5 permit.

A D-5b permit shall not be transferred to another location.

One D-5b permit may be issued at an enclosed shopping center containing at least two hundred twenty-five thousand, but less than four hundred thousand, square feet of floor area.

Two D-5b permits may be issued at an enclosed shopping center containing at least four hundred thousand square feet of floor area. No more than one D-5b permit may be issued at an enclosed shopping center for each additional two hundred thousand square feet of floor area or fraction thereof, up to a maximum of five D-5b permits for each enclosed shopping center.

The number of D-5b permits that may be issued at an enclosed shopping center shall be determined by subtracting the number of D-3 and D-5 permits issued in the enclosed shopping center from the number of D-5b permits that otherwise may be issued at the enclosed shopping center under the formulas provided in this division. Except as provided in this section, no quota shall be placed on the number of D-5b permits that may be issued. Notwithstanding any quota provided in this section, the holder of any D-5b permit first issued in accordance with this section is entitled to its renewal in accordance with section 4303.271 of the Revised Code.

The holder of a D-5b permit issued before April 4, 1984, whose tenancy is terminated for a cause other than nonpayment of rent, may return the D-5b permit to the division of liquor control and the division shall cancel that permit. Upon cancellation of that permit and upon the permit holder's payment of taxes, contributions, premiums, assessments, and other debts owing or accrued upon the date of cancellation to this state and its political subdivisions and a filing with the division of a certification thereof, the division shall issue to that person either a D-5 permit, or a D-1, a D-2, and a D-3 permit, as that person requests. The division shall issue the D-5 permit, or the D-1, D-2, and D-3 permits, even if the number of D-1, D-2, D-3, or D-5 permits currently issued in the municipal corporation or in the unincorporated area of the township where that person's proposed premises is located equals or exceeds the maximum number of such permits that can be issued in that municipal corporation or in the unincorporated area of that township under the population quota restrictions contained in section 4303.29 of the Revised Code. Any such D-1, D-2, D-3, or D-5 permit so issued shall not be transferred to another location. If a D-5b permit is canceled under the provisions of this paragraph, the number of D-5b permits that may be issued at the enclosed shopping center for which the D-5b permit was issued, under the formula provided in this division, shall be reduced by one if the enclosed shopping center was entitled to more than one D-5b permit under the formula.

The fee for this permit is one thousand eight hundred seventy-five dollars.

(C) Permit D-5c may be issued either to the owner or operator of a restaurant licensed pursuant to section ~~3732.03~~ 3717.43 of the Revised Code, and which qualifies under the other requirements of this section to sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold, and to sell the same products in the same manner and amounts not for consumption on the premises as may be sold by holders of D-1 and D-2

permits. In addition to the privileges authorized herein, the holder of a D-5c permit may exercise the same privileges as the holder of a D-5 permit.

To qualify for a D-5c permit, the owner or operator of a restaurant licensed pursuant to section ~~3732.03~~ 3717.43 of the Revised Code shall have operated the restaurant at the proposed premises for not less than twenty-four consecutive months immediately preceding the filing of an application therefor, have applied for a D-5 permit no later than December 31, 1988, and appear on the division's quota waiting list for not less than six months immediately preceding the filing of an application therefor. In addition to these requirements, the proposed D-5c permit premises shall be located within a municipal corporation and further within an election precinct which, at the time of the applications, has no more than twenty-five per cent of its total land area zoned for residential use.

A D-5c permit shall not be transferred to another location. No quota restriction shall be placed on the number of such permits which may be issued.

Any person who has held a D-5c permit for at least two years may apply for a D-5 permit, and the division of liquor control shall issue the D-5 permit notwithstanding the quota restrictions contained in section 4303.29 of the Revised Code or in any rule of the liquor control commission.

The fee for this permit is one thousand two hundred fifty dollars.

(D) Permit D-5d may be issued to either the owner or operator of a restaurant that is licensed pursuant to section ~~3732.03~~ 3717.43 of the Revised Code and located at an airport operated by a board of county commissioners pursuant to section 307.20 of the Revised Code or at an airport operated by a regional airport authority pursuant to Chapter 308. of the Revised Code. Not more than one D-5d permit shall be issued in each county. The holder of a D-5d permit may sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold, and may sell the same products in the same manner and amounts not for consumption on the premises where sold as may be sold by the holders of D-1 and D-2 permits. In addition to the privileges authorized in this division, the holder of a D-5d permit may exercise the same privileges as the holder of a D-5 permit.

A D-5d permit shall not be transferred to another location. Except as otherwise provided in this division, no quota restrictions shall be placed on the number of such permits which may be issued.

The fee for this permit is one thousand eight hundred seventy-five dollars.

(E) Permit D-5e may be issued to any nonprofit organization that is



exempt from federal income taxation under "The Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501(c)(3), as amended, or that is a charitable organization under any chapter of the Revised Code, and that owns or operates a riverboat which meets all of the following:

- (1) Is permanently docked at one location;
- (2) Is designated as an historical riverboat by the Ohio historical society;
- (3) Contains not less than fifteen hundred square feet of floor area;
- (4) Has a seating capacity of fifty or more persons.

The holder of a D-5e permit may sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold.

A D-5e permit shall not be transferred to another location. No quota restriction shall be placed on the number of such permits which may be issued. The population quota restrictions contained in section 4303.29 of the Revised Code or in any rule of the liquor control commission shall not apply to this division and the division shall issue a D-5e permit to any applicant who meets the requirements of this division. However, the division shall not issue a D-5e permit if the permit premises or proposed permit premises are located within an area in which the sale of spirituous liquor by the glass is prohibited.

The fee for this permit is nine hundred seventy-five dollars.

(F) Permit D-5f may be issued to either the owner or the operator of a food service operation licensed under section ~~3732.03~~ 3717.43 of the Revised Code that meets all of the following:

- (1) Contains not less than twenty-five hundred square feet of floor area;
- (2) Is located on or in, or immediately adjacent to, the shoreline of, a navigable river;
- (3) Provides docking space for twenty-five boats;
- (4) Provides entertainment and recreation, provided that not less than fifty per cent of the business on the permit premises shall be preparing and serving meals for a consideration.

In addition, each application for a D-5f permit shall be accompanied by a certification from the local legislative authority that the issuance of the D-5f permit is not inconsistent with that political subdivision's comprehensive development plan or other economic development goal as officially established by the local legislative authority.

The holder of a D-5f permit may sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold.

A D-5f permit shall not be transferred to another location. No more than

fifteen D-5f permits shall be issued by the division of liquor control, and no more than two such permits shall be issued in any county. However, the division shall not issue a D-5f permit if the permit premises or proposed permit premises are located within an area in which the sale of spirituous liquor by the glass is prohibited.

A fee for this permit is one thousand eight hundred seventy-five dollars.

As used in this division, "navigable river" means a river which is also a "navigable water" as that term is defined in the "Federal Power Act," 94 Stat. 770 (1980), 16 U.S.C. 796.

(G) Permit D-5g may be issued to a nonprofit corporation that is either the owner or the operator of a national professional sports museum. The holder of a D-5g permit may sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold. The holder of a D-5g permit shall sell no beer or intoxicating liquor for consumption on the premises where sold after one a.m. A D-5g permit shall not be transferred to another location. No quota restrictions shall be placed on the number of D-5g permits that may be issued. The fee for this permit is one thousand five hundred dollars.

(H) Permit D-5h may be issued to any nonprofit organization that is exempt from federal income taxation under the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501(c)(3), as amended, that owns or operates a fine arts museum and has no less than five thousand bona fide members possessing full membership privileges. The holder of a D-5h permit may sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold. The holder of a D-5h permit shall sell no beer or intoxicating liquor for consumption on the premises where sold after one a.m. A D-5h permit shall not be transferred to another location. No quota restrictions shall be placed on the number of D-5h permits that may be issued. The fee for this permit is one thousand five hundred dollars.

(I) Permit D-5i may be issued to either the owner or the operator of a food service operation licensed under section ~~3732.03~~ 3717.43 of the Revised Code that meets all of the following requirements:

- (1) It is located in a municipal corporation or a township with a population of fifty thousand or less;
- (2) It has inside seating capacity for at least one hundred forty persons;
- (3) It has at least five thousand square feet of floor area;
- (4) It offers full-course meals, appetizers, and sandwiches;
- (5) Its receipts from beer and liquor sales do not exceed twenty-five per

cent of its total gross receipts;

(6) The value of its real and personal property exceeds nine hundred twenty-five thousand dollars.

The holder of a D-5i permit shall cause an independent audit to be performed at the end of one full year of operation following issuance of the permit, in order to verify the requirements of division (I)(5) of this section. The results of the independent audit shall be transmitted to the division. Upon determining that the receipts of the holder from beer and liquor sales exceeded twenty-five per cent of its total gross receipts, the division shall suspend the permit of the permit holder under section 4301.25 of the Revised Code and may allow the permit holder to elect a forfeiture under section 4301.252 of the Revised Code.

The holder of a D-5i permit may sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold, and may sell the same products in the same manner and amounts not for consumption on the premises where sold as may be sold by the holders of D-1 and D-2 permits. The holder of a D-5i permit shall sell no beer or intoxicating liquor for consumption on the premises where sold after two-thirty a.m. In addition to the privileges authorized in division (I) of this section, the holder of a D-5i permit may exercise the same privileges as the holder of a D-5 permit.

A D-5i permit shall not be transferred to another location. The division of liquor control shall not renew a D-5i permit unless the food service operation for which it is issued continues to meet the requirements described in divisions (I)(1) to (6) of this section. No quota restrictions shall be placed on the number of D-5i permits that may be issued. The fee for this permit is one thousand eight hundred seventy-five dollars.

Sec. 4303.182. Except as otherwise provided in this section, permit D-6 shall be issued to the holder of an A-1-A, A-2, C-2, D-2, D-3, D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, or D-7 permit to allow sale under such permit between the hours of one p.m. and midnight on Sunday, if such sale has been authorized under section 4301.361 of the Revised Code and under the restrictions of such authorization. Permit D-6 shall be issued to the holder of any permit, including a D-4a and D-5d permit, authorizing the sale of intoxicating liquor issued for a premises located at any publicly owned airport, as defined in section 4563.01 of the Revised Code, at which commercial airline companies operate regularly scheduled flights on which space is available to the public, to allow sale under such permit between the hours of one p.m. and midnight on Sunday, whether or not such sale has been authorized under section 4301.361 of the

Revised Code. Permit D-6 shall be issued to the holder of a D-5a permit, and to the holder of a D-3 or D-3a permit who is the owner or operator of a hotel or motel required to be licensed under section 3731.03 of the Revised Code containing at least fifty rooms for registered transient guests and which has on its premises a restaurant licensed pursuant to section ~~3732.03~~ 3717.43 of the Revised Code affiliated with the hotel or motel and within or contiguous to the hotel or motel and serving food within the hotel or motel, to allow sale under such permit between the hours of one p.m. and midnight on Sunday, whether or not such sale has been authorized under section 4301.361 of the Revised Code.

If the restriction to licensed premises where the sale of food and other goods and services exceeds fifty per cent of the total gross receipts of the permit holder at the premises is applicable, the division of liquor control may accept an affidavit from the permit holder to show the proportion of the permit holder's gross receipts derived from the sale of food and other goods and services. If the liquor control commission determines such affidavit to have been false, it shall revoke the permits of the permit holder at the premises concerned.

The fee for the D-6 permit is two hundred fifty dollars when it is issued to the holder of an A-1-A, A-2, D-2, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, or D-7 permit. The fee for the D-6 permit is two hundred dollars when it is issued to the holder of a C-2 permit.

Sec. 4303.183. Permit D-7 may be issued to the holder of any D-2 permit issued by the division of liquor control, or if there is an insufficient number of D-2 permit holders to fill the resort quota, to the operator of a food service operation required to be licensed under section ~~3732.03~~ 3717.43 of the Revised Code and which qualifies under the other requirements of this section, to sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold. Not less than fifty per cent of the business on the permit premises shall be preparing and serving meals for a consideration in order to qualify for and continue to hold such D-7 permit. The permit premises shall be located in a resort area.

"Resort area" means a municipal corporation, township, county, or any combination thereof, which provides entertainment, recreation, and transient housing facilities specifically intended to provide leisure time activities for persons other than those whose permanent residence is within the "resort area" and who increase the population of the "resort area" on a seasonal basis, and which experiences seasonal peaks of employment and

environmental services as a direct result of population increase generated by the transient, recreating public. A resort season shall begin on the first day of May and end on the last day of October. Notwithstanding section 4303.27 of the Revised Code, such permits may be issued for resort seasons without regard to the calendar year or permit year. Quota restrictions on the number of such permits shall take into consideration the transient population during the resort season, the custom and habits of visitors and tourists, and the promotion of the resort and tourist industry. The fee for this permit is three hundred seventy-five dollars per month.

Any suspension of a D-7 permit shall be satisfied during the resort season in which such suspension becomes final. If such suspension becomes final during the off-season, or if the period of the suspension extends beyond the last day of October, the suspension or remainder thereof shall be satisfied during the next resort season.

The ownership of a D-7 permit may be transferred from one permit holder to another. The holder of a D-7 permit may file an application to transfer such permit to a new location within the same resort area, provided that such permit holder shall be the owner or operator of a food service operation, required to be licensed under section ~~3732.03~~ 3717.43 of the Revised Code, at such new location.

Sec. 4736.01. As used in ~~sections 4736.01 to 4736.16 of the Revised Code~~ this chapter:

(A) "Environmental health science" means the aspect of public health science that includes, but is not limited to, the following bodies of knowledge: air quality, food quality and protection, hazardous and toxic substances, consumer product safety, housing, institutional health and safety, community noise control, radiation protection, recreational facilities, solid and liquid waste management, vector control, drinking water quality, milk sanitation, and rabies control.

(B) "Sanitarian" means a person who performs for compensation educational, investigational, technical, or administrative duties requiring specialized knowledge and skills in the field of environmental health science.

(C) "Registered sanitarian" means a person who is registered as a sanitarian in accordance with Chapter 4736. of the Revised Code.

(D) "Sanitarian-in-training" means a person who is registered as a sanitarian-in-training in accordance with Chapter 4736. of the Revised Code.

(E) "Practice of environmental health" means consultation, instruction, investigation, inspection, or evaluation by an employee of a city health

district, a general health district, the Ohio environmental protection agency, the department of health, or the department of agriculture requiring specialized knowledge, training, and experience in the field of environmental health science, with the primary purpose of improving or conducting administration or enforcement under any of the following:

(1) Chapter 911., 913., 917., 3717., 3721., ~~3732.~~, or 3733. of the Revised Code;

(2) Chapter 3734. of the Revised Code as it pertains to solid waste;

(3) Section 955.26, 3701.344, 3707.01, or 3707.03, sections 3707.33 to 3707.99, or section 3715.21 of the Revised Code;

(4) Rules adopted under section 3701.34 of the Revised Code pertaining to home sewage, rabies control, or swimming pools.

"Practice of environmental health" does not include sampling, testing, controlling of vectors, reporting of observations, or other duties that do not require application of specialized knowledge and skills in environmental health science performed under the supervision of a registered sanitarian.

The state board of sanitarian registration may further define environmental health science in relation to specific functions in the practice of environmental health through rules adopted by the board under Chapter 119. of the Revised Code.

Sec. 4745.01. (A) "Standard renewal procedure," as used in Chapters 905., 907., 909., 911., 913., 915., 918., 921., 923., 927., 942., 943., 953., 1321., 3710., 3713., ~~3715.~~, 3719., 3731., 3742., 3748., 3769., 3783., 3921., 3951., 4104., 4105., 4143., 4169., 4561., 4703., 4707., 4709., 4713., 4715., 4717., 4723., 4725., 4727., 4728., 4729., 4731., 4733., 4734., 4735., 4739., 4741., 4747., 4749., 4753., 4755., 4757., 4759., 4761., 4766., 4773., and 4775. of the Revised Code, means the license renewal procedures specified in this chapter.

(B) "Licensing agency," as used in this chapter, means any department, division, board, section of a board, or other state governmental unit subject to the standard renewal procedure, as defined in this section, and authorized by the Revised Code to issue a license to engage in a specific profession, occupation, or occupational activity, or to have charge of and operate certain specified equipment, machinery, or premises.

(C) "License," as used in this chapter, means a license, certificate, permit, card, or other authority issued or conferred by a licensing agency by authority of which the licensee has or claims the privilege to engage in the profession, occupation, or occupational activity, or to have control of and operate certain specific equipment, machinery, or premises, over which the licensing agency has jurisdiction.

(D) "Licensee," as used in this chapter, means either the person to whom the license is issued or renewed by a licensing agency, or the person, partnership, or corporation at whose request the license is issued or renewed.

(E) "Renewal" and "renewed," as used in this chapter and in the chapters of the Revised Code specified in division (A) of this section, includes the continuing licensing procedure provided in Chapter 3748. of the Revised Code and rules adopted under it and in sections 1321.05 and 3921.33 of the Revised Code, and as applied to those continuing licenses any reference in this chapter to the date of expiration of any license shall be construed to mean the due date of the annual or other fee for the continuing license.

Sec. 5104.05. (A) The director of human services shall issue a provisional license or license or renew a license for the operation of a child day-care center, if ~~he~~ the director finds, after investigation of the applicant and inspection of the center, that other requirements of Chapter 5104. of the Revised Code, rules promulgated pursuant to Chapter 5104. of the Revised Code, and the following requirements are met:

(1) The buildings in which the center is housed, subsequent to any major modification, have been approved by the department of commerce or a certified municipal, township, or county building department for the purpose of operating a child day-care center. Any structure used for the operation of a center shall be constructed, equipped, repaired, altered, and maintained in accordance with applicable provisions of Chapters 3781. and 3791. of the Revised Code and with regulations adopted by the board of building standards under Chapter 3781. of the Revised Code and this division for the safety and sanitation of structures erected for this purpose.

(2) The state fire marshal or the fire chief or fire prevention officer of the municipal corporation or township in which the center is located has inspected the center annually within the preceding license period and has found the center to be in compliance with rules promulgated by the fire marshal pursuant to section 3737.83 of the Revised Code regarding fire prevention and fire safety in a child day-care center.

(3) The center has received ~~from the board of health of the health district in which it is located or the state department of health~~ a current food service operation license ~~permitting the preparation or serving of meals or lunches, as provided in~~ under Chapter ~~3732~~ 3717. of the Revised Code ~~and any relevant regulations adopted by the public health council. If a meal is~~ if meals are to be served to children other than children of the licensee or administrator, ~~the preparation and serving of food in a child day-care center is included in the meaning of "food service operation" under section~~

~~3732.01 of the Revised Code~~, whether or not a consideration is received for ~~such food~~ the meals.

(B) The director of human services shall issue a provisional license or license or renew a license for the operation of a type A family day-care home, if ~~he~~ the director finds, after investigation of the applicant and inspection of the type A home, that other requirements of Chapter 5104. of the Revised Code, rules promulgated pursuant to Chapter 5104. of the Revised Code, and the following requirements are met:

(1) The state fire marshal or the fire chief or fire prevention officer of the municipal corporation or township in which the type A family day-care home is located has inspected the type A home annually within the preceding license period and has found the type A home to be in compliance with rules promulgated by the fire marshal pursuant to section 3737.83 of the Revised Code regarding fire prevention and fire safety in a type A home.

(2) The type A home is in compliance with rules set by the director of human services in cooperation with the director of health pursuant to section 3701.80 of the Revised Code regarding meal preparation and meal service in the home. The director of human services, in accordance with procedures recommended by the director of health, shall inspect each type A home to determine compliance with those rules.

(3) The type A home is in compliance with rules promulgated by the director of human services in cooperation with the board of building standards regarding safety and sanitation pursuant to section 3781.10 of the Revised Code.

Sec. 5104.051. (A)(1) The department of commerce is responsible for the inspections of child day-care centers as required by division (A)(1) of section 5104.05 of the Revised Code. Where there is a municipal, township, or county building department certified under section 3781.10 of the Revised Code to exercise enforcement authority with respect to the category of building occupancy which includes day-care centers, all inspections required under division (A)(1) of section 5104.05 of the Revised Code shall be made by that department according to the standards established by the board of building standards. Inspections in areas of the state where there is no municipal, township, or county building department certified under section 3781.10 of the Revised Code to exercise enforcement authority with respect to the category of building occupancy which includes day-care centers shall be made by personnel of the department of commerce. Inspections of centers shall be contingent upon payment of a fee by the applicant to the department having jurisdiction to inspect.

(2) The department of commerce is responsible for the inspections of



type A family day-care homes as required by division (B)(3) of section 5104.05 of the Revised Code. Where there is a municipal, township, or county building department certified under section 3781.10 of the Revised Code to exercise enforcement authority with respect to the category of building occupancy which includes type A homes, all inspections required under division (B)(3) of section 5104.05 of the Revised Code shall be made by that department according to the standards established by the board of building standards. Inspections in areas of the state where there is no municipal, township, or county building department certified under section 3781.10 of the Revised Code to exercise enforcement authority with respect to the category of building occupancy which includes type A homes shall be made by personnel of the department of commerce. Inspections of type A homes shall be contingent upon payment of a fee by the applicant to the department having jurisdiction to inspect.

(B) The state fire marshal is responsible for the inspections required by divisions (A)(2) and (B)(1) of section 5104.05 of the Revised Code. In municipal corporations and in townships outside municipal corporations where there is a fire prevention official, the inspections shall be made by the fire chief or the fire prevention official under the supervision of and according to the standards established by the state fire marshal. In townships outside municipal corporations where there is no fire prevention official, inspections shall be made by the employees of the state fire marshal.

(C) The fire marshal shall enforce all statutes and rules pertaining to fire safety and fire prevention in child day-care centers and type A family day-care homes. In the event of a dispute between the marshal and any other responsible officer under sections 5104.05 and 5104.051 of the Revised Code with respect to the interpretation or application of a specific fire safety statute or rule, the interpretation of the marshal shall prevail.

(D) As used in this division, "licensor" has the same meaning as in section ~~3732.04~~ 3717.01 of the Revised Code.

The licensor for food service operations in the city or general health district in which the center is located is responsible for the inspections required under Chapter ~~3732~~ 3717 of the Revised Code.

(E) Any moneys collected by the department of commerce under this section shall be paid into the state treasury to the credit of the industrial compliance operating fund created in section 121.084 of the Revised Code.

Sec. 5739.02. For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to

those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A) The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code.

The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

In the case of a sale, the price of which consists in whole or in part of rentals for the use of the thing transferred, the tax, as regards such rentals, shall be measured by the installments thereof.

In the case of a sale of a service defined under division (MM) or (NN) of section 5739.01 of the Revised Code, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers, and of magazine subscriptions shipped by second class mail, and sales or transfers of magazines distributed as controlled circulation publications;

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;

(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;

(7) Sales of natural gas by a natural gas company, of electricity by an electric company, of water by a water-works company, or of steam by a

ing company, if in each case the thing sold is delivered to consumers through wires, pipes, or conduits, and all sales of communications services by a telephone or telegraph company, all terms as defined in section 5727.01 of the Revised Code;

(8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under section 1548.06 of the Revised Code, watercraft documented with the United States coast guard, snowmobiles, and all-purpose vehicles as defined in section 4519.01 of the Revised Code;

(9) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes, by churches or by nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year. If the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization, except that sales made by separate student clubs and other groups of students of a primary or secondary school, and sales made by a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school, shall not be considered to be sales of such school, and sales by each such club, group, association, or organization shall be counted separately for purposes of the six-day limitation. This division does not apply to sales by a noncommercial educational radio or television broadcasting station.

(10) Sales not within the taxing power of this state under the Constitution of the United States;

(11) The transportation of persons or property, unless the transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda

or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision thereof, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of such structures or improvements; building and construction materials sold to construction contractors for

incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code; and building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;

(14) Sales of ships or vessels or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels or rail rolling stock;

(15) Sales to persons engaged in any of the activities mentioned in division (E)(2) or (9) of section 5739.01 of the Revised Code, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, and "packaging" means placing therein.

(16) Sales of food to persons using food stamp coupons to purchase the food. As used in division (B)(16) of this section, "food" has the same meaning as in the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations adopted pursuant to that act.

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by

persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

(18) Sales of drugs dispensed by a licensed pharmacist upon the order of a licensed health professional authorized to prescribe drugs to a human being, as the term "licensed health professional authorized to prescribe drugs" is defined in section 4729.01 of the Revised Code; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with end-stage renal disease; hospital beds when purchased for use by persons with medical problems for medical purposes; and oxygen and oxygen-dispensing equipment when purchased for use by persons with medical problems for medical purposes;

(19) Sales of artificial limbs or portion thereof, breast prostheses, and other prosthetic devices for humans; braces or other devices for supporting weakened or nonfunctioning parts of the human body; wheelchairs; devices used to lift wheelchairs into motor vehicles and parts and accessories to such devices; crutches or other devices to aid human perambulation; and items of tangible personal property used to supplement impaired functions of the human body such as respiration, hearing, or elimination. No exemption under this division shall be allowed for nonprescription drugs, medicines, or remedies; items or devices used to supplement vision; items or devices whose function is solely or primarily cosmetic; or physical fitness equipment. This division does not apply to sales to a physician or medical facility for use in the treatment of a patient.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services for political subdivisions of the state;

(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state upon the

presentation of an affidavit executed in this state by the nonresident purchaser affirming that the purchaser is a nonresident of this state, that possession of the motor vehicle is taken in this state for the sole purpose of immediately removing it from this state, that the motor vehicle will be permanently titled and registered in another state, and that the motor vehicle will not be used in this state;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

(25)(a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice;

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;

(27) Sales of solar, wind, or hydrothermal energy systems that meet the guidelines established under division (B) of section 1551.20 of the Revised Code, components of such systems that are identified under division (B) or (D) of that section, or charges for the installation of such systems or components, made during the period from August 14, 1979, through December 31, 1985;

(28) Sales to persons licensed to conduct a food service operation pursuant to section ~~3732.03~~ 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:

(a) To prepare food for human consumption for sale;

(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;

(c) To clean tangible personal property used to prepare or serve food for

human consumption for sale.

(29) Sales of animals by nonprofit animal adoption services or county humane societies;

(30) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;

(31) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;

(32) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;

(33) The sale, lease, repair, and maintenance of; parts for; or items attached to or incorporated in motor vehicles that are primarily used for transporting tangible personal property by a person engaged in highway transportation for hire;

(34) Sales to the state headquarters of any veterans' organization in Ohio that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;

(35) Sales to a telecommunications service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in division (B)(35) of this section shall be in lieu of all other exceptions under division (E)(2) of section 5739.01 of the Revised Code to which a telecommunications service vendor may otherwise be entitled based upon the use of the thing purchased in providing the telecommunications service.

(36) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious metal that has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, and palladium, and which is in such state or condition that its value depends upon its content and not upon its form. "Investment metal bullion" does not include fabricated precious metal that has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses. "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal under the laws of the



United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.

(37)(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B)(37)(a) of this section; and of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(c) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B)(37) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

(38) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

(39) The sale of a motor vehicle that is used exclusively for a vanpool ridesharing arrangement to persons participating in the vanpool ridesharing arrangement when the vendor is selling the vehicle pursuant to a contract between the vendor and the department of transportation;

(40) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;

(41) Sales to a professional racing team of any of the following:

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;

(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.

(42) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000.

For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.

As used in this section, except in division (B)(16) of this section, "food" includes cereals and cereal products, milk and milk products including ice cream, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruits, fruit products, and pure fruit juices, condiments, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products. It does not include: spirituous or malt liquors; soft drinks; sodas and beverages that are ordinarily dispensed at bars and soda fountains or in connection therewith, other than coffee, tea, and cocoa; root beer and root beer extracts; malt and malt extracts; mineral oils, cod liver oils, and halibut liver oil; medicines, including tonics, vitamin preparations, and other products sold primarily for their medicinal properties; and water, including mineral, bottled, and carbonated waters, and ice.

(C) The levy of an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to this section and division (B) of section 5739.01 of the Revised Code does not prevent any of the following:

(1) A municipal corporation or township from levying an excise tax for any lawful purpose not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests in addition to the tax levied by this section. If a municipal corporation or township repeals a tax imposed under division (C)(1) of this section and a county in which the municipal corporation or township has territory has a tax imposed under division (C) of section 5739.024 of the Revised Code in effect, the municipal corporation or township may not reimpose its tax as long as that county tax remains in effect. A municipal corporation or township in which a tax is levied under division (B)(2) of section 351.021 of the Revised Code

may not increase the rate of its tax levied under division (C)(1) of this section to any rate that would cause the total taxes levied under both of those divisions to exceed three per cent on any lodging transaction within the municipal corporation or township.

(2) A municipal corporation or a township from levying an additional excise tax not to exceed three per cent on such transactions pursuant to division (B) of section 5739.024 of the Revised Code. Such tax is in addition to any tax imposed under division (C)(1) of this section.

(3) A county from levying an excise tax pursuant to division (A) of section 5739.024 of the Revised Code.

(4) A county from levying an excise tax not to exceed three per cent of such transactions pursuant to division (C) of section 5739.024 of the Revised Code. Such a tax is in addition to any tax imposed under division (C)(3) of this section.

(5) A convention facilities authority, as defined in division (A) of section 351.01 of the Revised Code, from levying the excise taxes provided for in division (B) of section 351.021 of the Revised Code.

(6) A county from levying an excise tax not to exceed one and one-half per cent of such transactions pursuant to division (D) of section 5739.024 of the Revised Code. Such tax is in addition to any tax imposed under division (C)(3) or (4) of this section.

(7) A county from levying an excise tax not to exceed one and one-half per cent of such transactions pursuant to division (E) of section 5739.024 of the Revised Code. Such a tax is in addition to any tax imposed under division (C)(3), (4), or (6) of this section.

(D) The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues.

Sec. 5739.11. As used in this section, "food service operator" means a vendor who conducts a food service operation under Chapter ~~3732~~ 3717 of the Revised Code.

Each vendor shall keep complete and accurate records of sales, together with a record of the tax collected on the sales, which shall be the amount due under sections 5739.01 to 5739.31 of the Revised Code, and shall keep all invoices, bills of lading, and other such pertinent documents. Alternatively, any food service operator who has not been convicted under section 5739.99 of the Revised Code, with respect to the vendor's food service operation, may keep a sample of primary sales records. Such sample shall consist of all sales invoices, guest checks, cash register tapes, and other

such documents for each of fourteen days in every calendar quarter. The specific days to be included in the sample shall be determined by the tax commissioner and entered in the commissioner's journal within ten days after the close of every calendar quarter. The tax commissioner shall notify each such operator registered pursuant to section 5739.17 of the Revised Code who requests such notification of the days to be included in each sample by the last day of the month following the close of each calendar quarter. The notice also shall contain a statement that destruction of primary records for time periods other than the specified sample period is optional and that some operators may wish to keep all such records for four full years so as to be able to clearly demonstrate that they have fully complied with this chapter and Chapter 5741. of the Revised Code. The tax commissioner shall further make such determination known through a general news release.

Each vendor shall keep exemption certificates required to be obtained under section 5739.03 of the Revised Code. If the vendor makes sales not subject to the tax and not required to be evidenced by an exemption certificate, the vendor's records shall show the identity of the purchaser, if the sale was exempted by reason of such identity, or the nature of the transaction if exempted for any other reason. Vendors are not required to differentiate in record-keeping between sales that are exempt from taxation under division (B)(2) of section 5739.02 of the Revised Code and those that are exempt under division (B)(16) of that section. Such records and other documents required to be kept by this section shall be open during business hours to the inspection of the tax commissioner, and shall be preserved for a period of four years, unless the commissioner, in writing, consents to their destruction within that period, or by order requires that they be kept longer.

SECTION 2. That existing sections 901.43, 911.01, 911.011, 911.02, 915.24, 2305.37, 3701.22, 3701.83, 3707.33, 3707.99, 3709.09, 3715.02, 3715.52, 3715.99, 3724.03, 3732.01, 3732.02, 3732.03, 3732.04, 3732.05, 3732.06, 3732.08, 3732.09, 3732.10, 3732.11, 3732.12, 3732.13, 3732.14, 3732.99, 4303.021, 4303.13, 4303.14, 4303.15, 4303.181, 4303.182, 4303.183, 4736.01, 4745.01, 5104.05, 5104.051, 5739.02, and 5739.11 of the Revised Code are hereby repealed.

SECTION 3. Sections 911.01, 911.011, 911.02, 3717.21, 3717.24, and 3717.44 of the Revised Code, as amended or enacted by this act, shall take effect February 1, 2001.

SECTION 4. That sections 3707.38, 3715.21, 3715.211, and 3732.07 of the Revised Code are hereby repealed, effective February 1, 2001.

SECTION 5. Prior to the effective date of section 3717.21 of the Revised Code, the Director of Agriculture shall conduct a preliminary survey, pursuant to section 3717.11 of the Revised Code, of each board of health to determine whether the board is qualified and has the capacity to administer and enforce the provisions of Chapter 3717. of the Revised Code pertaining to retail food establishments and to abide by the Ohio Uniform Food Safety Code. If the director determines that a board is not qualified or lacks the requisite capacity, the director shall grant the board an opportunity to take corrective action. The director shall notify the board of its deficiencies, specify the corrective actions that must be taken, and specify a deadline by which the board must complete the actions to receive the director's approval under section 3717.11 of the Revised Code.

SECTION 6. Initial appointments to the Retail Food Safety Advisory Council, created by section 3717.02 of the Revised Code, shall be made by the Director of Agriculture and Director of Health not later than 90 days after the effective date of this act. When all members are appointed, the Director of Health shall abolish the Food Service Advisory Board that the Director of Health appointed pursuant to section 3732.02 of the Revised Code, as that section existed before the effective date of this act.

SECTION 7. (A) The Retail Food Safety Advisory Council, created by section 3717.02 of the Revised Code, shall conduct a five-year study for the following purposes:

(1) To determine whether the recommendations of the food safety council created by Am. Sub. H.B. 113 of the 122nd General Assembly have been implemented and, if implemented, the effects of the implementation;

(2) To evaluate the level of food safety awareness of consumers and their confidence in the state's food supply.

(B) On or before June 1, 2006, the Council shall complete its study and issue a report of its findings and recommendations. The report shall be submitted to the Speaker of the House of Representatives, Minority Leader of the House of Representatives, President of the Senate, and Minority Leader of the Senate.

SECTION 8. (A) The Director of Agriculture and the Director of Health shall include, in the information their departments maintain on the internet, electronic links to each other's information and to a version of the Ohio Uniform Food Safety Code maintained on the internet by the departments. The Ohio Uniform Food Safety Code shall contain electronic links to the Ohio Revised Code, Ohio Administrative Code, and any other information maintained on the internet that the directors jointly deem relevant.

(B) The Director of Agriculture and the Director of Health shall study the feasibility of unifying the computer systems of the Department of Agriculture and the Department of Health or otherwise ensuring the compatibility of their respective computer systems.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_