

AN ACT

To amend sections 3709.02, 3709.03, 3709.05, 3709.07, 3715.01, 3715.021, 3715.59, 3715.60, 3717.01, 3717.03, 3717.05, 3717.07, 3717.11, 3717.22, 3717.23, 3717.25, 3717.27, 3717.29, 3717.42, 3717.43, 4303.021, 4303.13, 4303.14, 4303.15, 4303.18, 4303.181, 4303.182, and 4303.183 and to enact sections 3709.41, 3715.022, 3715.023, 3715.024, 3715.025, 3717.041, 3717.071, 3717.111, and 3717.221 of the Revised Code to modify the laws pertaining to the administration and enforcement of food safety programs, to require each board of health to have a member who represents the activities licensed by boards of health, and to declare an emergency.

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

SECTION 1. That sections 3709.02, 3709.03, 3709.05, 3709.07, 3715.01, 3715.021, 3715.59, 3715.60, 3717.01, 3717.03, 3717.05, 3717.07, 3717.11, 3717.22, 3717.23, 3717.25, 3717.27, 3717.29, 3717.42, 3717.43, 4303.021, 4303.13, 4303.14, 4303.15, 4303.18, 4303.181, 4303.182, and 4303.183 be amended and sections 3709.41, 3715.022, 3715.023, 3715.024, 3715.025, 3717.041, 3717.071, 3717.111, and 3717.221 of the Revised Code be enacted to read as follows:

Sec. 3709.02. (A) In each general health district there shall be a board of health consisting of five members to be appointed as provided in ~~section~~ sections 3709.03 and 3709.41 of the Revised Code. The term of office of the members shall be five years from the date of appointment, except that of those first appointed one shall serve for five years, one for four years, one for three years, one for two years, and one for one year, and thereafter one shall be appointed each year. This paragraph does not apply to a combined board of health created under section 3709.07 of the Revised Code.

(B) Each member of the board shall be paid a sum not to exceed eighty dollars a day for the member's attendance at each meeting of the board. No

member shall receive compensation for attendance at more than eighteen meetings in any year.

(C) Each member of the board shall receive travel expenses at rates established by the director of budget and management pursuant to section 126.31 of the Revised Code to cover the actual and necessary travel expenses incurred for travel to and from meetings that take place outside the county in which the member resides, except that any member may receive travel expenses for registration for any conference that takes place inside the county in which the member resides.

(D) A vacancy in the membership of the board shall be filled in the same manner as an original appointment and shall be for the unexpired term. When a vacancy occurs, in a position to be filled by the district advisory council ~~3709.03 of the Revised Code the that, the council~~ shall hold a special meeting pursuant to section 3709.03 of the Revised Code ~~and appoint for the purpose of appointing a member in the same manner described in that section for appointing members at annual meetings of the council to fill the vacancy.~~

(E) A majority of the members of the board constitutes a quorum.

Sec. 3709.03. (A) There is hereby created in each general health district a district advisory council. A council shall consist of the president of the board of county commissioners, the chief executive of each municipal corporation not constituting a city health district, and the president of the board of township trustees of each township. The board of county commissioners, the legislative body of a municipal corporation, and the board of township trustees of a township may select an alternate from among themselves to serve if the president, the chief executive, or the president of the board of township trustees is unable to attend any meeting of the district advisory council. When attending a meeting on behalf of a council member, the alternate may vote on any matter on which the member is authorized to vote.

The council shall organize by selecting a chair and secretary from among its members. The council shall adopt bylaws governing its meetings, the transaction of business, and voting procedures.

The council shall meet annually in ~~march~~ March at a place determined by the chair and the health commissioner for the purpose of electing the chair and the secretary, ~~appointing a member of~~ making necessary appointments to the board of health, receiving and considering the annual or special reports from the board of health, and making recommendations to the board of health or to the department of health in regard to matters for the betterment of health and sanitation within the district or for needed

legislation. The secretary of the council shall notify the district health commissioner and the director of health of the proceedings of such meeting.

Special meetings of the council shall be held on the order of any of the following:

- (1) The director of health;
- (2) The board of health;
- (3) The lesser of five or a majority of district advisory council members.

The district health commissioner shall attend all meetings of the council.

(B) ~~At its annual meetings, the~~ The district advisory council shall appoint ~~one member~~ four members of the board of health, and the remaining member shall be appointed by the health district licensing council established under section 3709.41 of the Revised Code. At least one member of the board of health shall be a physician. Appointments shall be made with due regard to equal representation of all parts of the district.

(C) If at an annual or special meeting at which a member of the board of health is to be appointed fewer than a majority of the members of the district council are present, the council, by the majority vote of council members present, may organize an executive committee to make the appointment. An executive committee shall consist of five council members, including the president of the board of county commissioners, the council chair, the council secretary, and two additional council members selected by majority affirmative vote of the council members present at the meeting. The additional members selected shall include one representative of municipal corporations in the district that are not city health districts and one representative of townships in the district. If an individual is eligible for more than one position on the executive committee due to holding a particular office, the individual shall fill one position on the committee and the other position shall be filled by a member selected by a majority affirmative vote of the council members present at the meeting. A council member's alternate for annual meetings may serve as the member's alternate at meetings of the executive committee.

Not later than thirty days after an executive committee is organized, the committee shall meet and the council chair shall present to the committee the matter of appointing a member of the board of health. The committee shall appoint the board member by majority affirmative vote. In the case of a combined health district, the executive committee shall appoint only members of the board of health that are to be appointed by the district advisory council, unless the contract for administration of health affairs in the combined district provides otherwise. If a majority affirmative vote is not reached within thirty days after the executive committee is organized,

the director of health shall appoint the member of the board of health under the authority conferred by section 3709.03 of the Revised Code.

If the council fails to meet or appoint a member of the board of health as required by this section or section 3709.02 of the Revised Code, the director of health, with the consent of the public health council, may appoint the member.

Sec. 3709.05. (A) Unless an administration of public health different from that specifically provided in this section is established and maintained under authority of its charter, or unless a combined city health district is formed under section 3709.051 of the Revised Code, the legislative authority of each city constituting a city health district shall establish a board of health. The board shall be composed of ~~five~~ four members appointed by the mayor and confirmed by the legislative authority and one member appointed by the health district licensing council established under section 3709.41 of the Revised Code.

(B) Each member of the board shall be paid a sum not to exceed eighty dollars a day for the member's attendance at each meeting of the board. No member shall receive compensation for attendance at more than eighteen meetings in any year.

(C) Each member of the board shall receive travel expenses at rates established by the director of budget and management pursuant to section 126.31 of the Revised Code to cover the actual and necessary travel expenses incurred for travel to and from meetings that take place outside the county in which the member resides, except that any member may receive travel expenses for registration for any conference that takes place inside the county in which the member resides.

(D) A majority of the members constitutes a quorum, and the mayor shall be president of the board.

(E) The term of office of the members shall be five years from the date of appointment, except that of those first appointed, one shall serve for five years, one for four years, one for three years, one for two years, and one for one year, and thereafter one shall be appointed each year.

A vacancy in the membership of the board shall be filled in like manner as an original appointment and shall be for the unexpired term.

Sec. 3709.07. Except as provided in section 3709.071 of the Revised Code, when it is proposed that one or more city health districts unite with a general health district in the formation of a single district, the district advisory council of the general health district shall meet and vote on the question of union. It shall require a majority affirmative vote of the members of the district advisory council to carry the question. The

islative authority of each city shall likewise vote on the question. A majority voting affirmatively shall be required for approval. When the majority of the district advisory council and the legislative authority have voted affirmatively, the chair of the council and the chief executive of each city shall enter into a contract for the administration of health affairs in the combined district. Such contract shall state the proportion of the expenses of the board of health or health department of the combined district to be paid by the city or cities and by the original general health district. The contract may provide that the administration of the combined district shall be taken over by either the board of health or health department of one of the cities, by the board of health of the general health district, or by a combined board of health. Such contract shall prescribe the date on which such change of administration shall be made. A copy of such contract shall be filed with the director of health.

The combined district shall constitute a general health district, and the board of health or health department of the city, the board of health of the original general health district, or the combined board of health, as may be agreed in the contract, shall have, within the combined district, all the powers granted to, and perform all the duties required of, the board of health of a general health district.

The district advisory council of the combined general health district shall consist of the members of the district advisory council of the original general health district and the chief executive of each city constituting a city health district, each member having one vote.

If the contract provides that the administration of the combined district shall be taken over by a combined board of health, rather than the board of health of the original health district, the contract shall set forth the number of members of such board, their terms of office, and the manner of appointment or election of officers. One of the members of such combined board of health shall be a physician, and one member shall be an individual appointed by the health district licensing council established under section 3709.41 of the Revised Code. The contract may also provide for the representation of areas by one or more members and shall, in such event, specify the territory to be included in each such area.

The appointment of any member of the combined board who is designated by the provisions of the contract to represent a city shall be made by the chief executive and approved by the legislative authority of such city. If a member is designated by the contract to represent more than one city, the member shall be appointed by majority vote of the chief executives of all cities included in any such area. ~~The~~ Except for the member appointed by

the health district licensing council, the appointment of all members of the combined board who are designated to represent the balance of the district shall be made by the district advisory council.

The service status of any person employed by a city or general health district shall not be affected by the creation of a combined district.

Sec. 3709.41. (A) There is hereby created in each city and in each general health district a health district licensing council, to be appointed by the entity that has responsibility for appointing the board of health in the health district. The members of the health district licensing council shall consist of one representative of each business activity for which the board of health operates a licensing program. To be appointed and remain a member, an individual must be a resident of the health district for which the council was created.

The appointing authority shall make initial appointments to the council not later than thirty days after the effective date of this section. Of the initial appointments to the council, one-third of the members, rounded to the nearest whole number, shall serve for a term ending three years after the effective date of this section; one-third, rounded to the nearest whole number, shall serve for a term ending four years after the effective date of this section; and the remaining members shall serve for a term ending five years after the effective date of this section. Thereafter, terms of office shall be five years, with each term ending on the same day of the same month as did the term that it succeeds.

Each member shall hold office from the date of the member's 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. Any member appointed to fill a vacancy occurring prior to the expiration 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 subsequent to 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.

Members of a health district licensing council shall serve without compensation, except to the extent that serving on the council is part of their regular duties of employment.

(B) Each licensing council shall organize by selecting from among its members a chairperson, secretary, and any other officers it considers necessary. Each council shall adopt bylaws for the regulation of its affairs and the conduct of its business.

Each council shall meet at least quarterly or at more frequent intervals if specified in its bylaws. In addition to the mandatory meetings, a council shall meet at the call of the chairperson or the request of a majority of the council members.

(C) Pursuant to sections 3709.03, 3709.05, and 3709.07 of the Revised Code, the health district licensing council shall appoint one of its members to serve as a member of the board of health. The council shall appoint one of its members to serve as an alternate board of health member if for any reason the original member is required to abstain from voting on a particular issue being considered by the board of health. While serving on behalf of the original member, the alternate member has the same powers and duties as the original member.

Sec. 3715.01. (A) As used in this chapter:

(1) "Public health council" means the public health council established by section 3701.33 of the Revised Code.

(2) "Person" means an individual, partnership, corporation, or association.

(3) "Food" means:

(a) Articles used for food or drink for humans or animals;

(b) Chewing gum;

(c) Articles used for components of any such articles.

(4) "Drug" means:

(a) Articles recognized in the United States pharmacopoeia and national formulary, or any supplement to them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) Articles, other than food, intended to affect the structure or any function of the body of humans or other animals;

(d) Articles intended for use as a component of any of the foregoing articles, other than devices or their components, parts, or accessories.

(5) "Device," except when used in division (B)(1) of this section and in division (A)(10) of section 3715.52, division (F) of section 3715.60, division (A)(5) of section 3715.64, and division (C) of section 3715.67 of the Revised Code, means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is any of the following:

(a) Recognized in the United States pharmacopoeia and national

mulary, or any supplement to them;

(b) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) Intended to affect the structure or any function of the body of humans or animals, and that does not achieve any of its principal intended purposes through chemical action within or on the body of humans or animals and is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(6) "Cosmetic" means:

(a) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) Articles intended for use as a component of any such article, except that "cosmetic" does not include soap.

(7) "Label" means a display of written, printed, or graphic matter upon the immediate container, exclusive of package liners, of any article.

Any word, statement, or other information required by this chapter to appear on the label must appear on the outside container or wrapper, if any, of the retail package of the article, or the label must be easily legible through the outside container or wrapper.

(8) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon an article or any of its containers or wrappers;

(b) Accompanying such article.

(9) "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(10) "New drug" means:

(a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof;

(b) Any drug the composition of which is such that the drug, as a result of investigation to determine its safety for use under such conditions, has become so recognized, but that has not, other than in an investigation, been used to a material extent or for a material time under such conditions.

(11) "Contaminated with filth" applies to any food, drug, device, or

cosmetic that has not been protected as far as may be necessary by all reasonable means from dust, dirt, and all foreign or injurious substances.

(12) "Honey" means the nectar and saccharine exudation of plants that has been gathered, modified, and stored in a honeycomb by honeybees.

(13) "Finished dosage form" means the form of a drug that is, or is intended to be, dispensed or administered to humans or animals and requires no further manufacturing or processing other than packaging, reconstituting, or labeling.

(14)(a) "Manufacture" means the planting, cultivating, harvesting, processing, making, preparing, or otherwise engaging in any part of the production of a drug by propagating, compounding, converting, or processing, either directly or indirectly by extracting from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes the following:

(i) Any packaging or repackaging of the drug or labeling or relabeling of its container, the promotion and marketing of the drug, and other activities incident to production;

(ii) The preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, licensed health professionals authorized to prescribe drugs, or other persons.

(b) "Manufacture" does not include the preparation, compounding, packaging, or labeling of a drug by a pharmacist as an incident to either of the following:

(i) Dispensing a drug in the usual course of professional practice;

(ii) Providing a licensed health professional authorized to prescribe drugs with a drug for the purpose of administering to patients or for using the drug in treating patients in the professional's office.

(15) "Dangerous drug" has the same meaning as in section 4729.01 of the Revised Code.

(16) "Generically equivalent drug" means a drug that contains identical amounts of the identical active ingredients, but not necessarily containing the same inactive ingredients, that meets the identical compendial or other applicable standard of identity, strength, quality, and purity, including potency, and where applicable, content uniformity, disintegration times, or dissolution rates, as the prescribed brand name drug and the manufacturer or distributor holds, if applicable, either an approved new drug application or an approved abbreviated new drug application unless other approval by law or from the federal food and drug administration is required.

No drug shall be considered a generically equivalent drug for the

poses of this chapter if it has been listed by the federal food and drug administration as having proven bioequivalence problems.

(17) "Licensed health professional authorized to prescribe drugs" and "prescriber" have the same meanings as in section 4729.01 of the Revised Code.

(18) "Home" means the primary residence occupied by the residence's owner, on the condition that the residence contains only one stove or oven used for cooking, which may be a double oven, designed for common residence usage and not for commercial usage, and that the stove or oven be operated in an ordinary kitchen within the residence.

(19) "Potentially hazardous food" means a food that is natural or synthetic, to which any of the following apply:

(a) It has a pH level greater than 4.6 when measured at seventy-five degrees fahrenheit or twenty-four degrees celsius.

(b) It has a water activity value greater than 0.85.

(c) It requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of clostridium botulinum, or in the case of raw shell eggs, the growth of salmonella enteritidis.

(20) "Cottage food production operation" means a person who, in the person's home, produces food items that are not potentially hazardous foods, including bakery products, jams, jellies, candy, fruit butter, and similar products specified in rules adopted pursuant to section 3715.025 of the Revised Code.

(B) For the purposes of sections 3715.52 to 3715.72 of the Revised Code:

(1) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequence which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(2) The provisions regarding the selling of food, drugs, devices, or cosmetics include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the

sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment. The provisions do not prohibit a licensed health professional authorized to prescribe drugs from administering or personally furnishing a drug or device to a patient.

(3) The representation of a drug, in its labeling or advertisement, as an antiseptic is a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use that involves prolonged contact with the body.

(4) Whenever jurisdiction is vested in the director of agriculture or the state board of pharmacy, the jurisdiction of the board shall be limited to the sale, offering for sale, giving away, delivery, or dispensing in any manner of drugs at the wholesale and retail levels or to the consumer and shall be exclusive in the case of such sale, offering for sale, giving away, delivery, or dispensing in any manner of drugs at the wholesale and retail levels or to the consumer in any place where prescriptions are dispensed or compounded.

(5) To assist in effectuating the provisions of those sections, the director of agriculture or state board of pharmacy may request assistance or data from any government or private agency or individual.

Sec. 3715.021. (A) As used in this section, "~~wholesale~~ food processing establishment" means a premises or part of a premises where food is processed, packaged, manufactured, or otherwise held or handled for distribution to another location or for sale or distribution at wholesale to ~~persons other than the ultimate consumers~~. "~~Wholesale food~~ Food processing 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. A "food processing establishment" does not include a cottage food production operation; a processor of maple syrup who boils sap when a minimum of seventy-five per cent of the sap used to produce the syrup is collected directly from trees by that processor; a processor of sorghum who processes sorghum juice when a minimum of seventy-five per cent of the sorghum juice used to produce the sorghum is extracted directly from sorghum plants by that processor; or a beekeeper who jars honey when a minimum of seventy-five per cent of the honey is from that beekeeper's own hives.

(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 and good manufacturing practices for ~~wholesale~~ food processing establishments, including the

ilities of ~~wholesale~~ food processing establishments and their sanitation. The rules shall conform with or be equivalent to the standards for foods established by the United States food and drug administration in Title 21 of the Code of Federal Regulations.

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 processing establishment.

Sec. 3715.022. (A) All food products, including those produced and packaged by a cottage food production operation, and all packaged maple syrup, sorghum, and honey, are subject to food sampling conducted by the director of agriculture, or a representative the director authorizes, to determine if a food product is misbranded or adulterated. A component of the food sampling conducted under this section may include the performance of sample analyses in accordance with section 3715.02 of the Revised Code.

The director of agriculture shall adopt rules as the director considers necessary to establish standards for food sampling and procedures for administration of this section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code.

(B) Labeling requirements do not apply to fruit butter produced at a festival or celebration, if the festival or celebration is organized by a political subdivision of this state and the fruit butter is sold during the festival or celebration from the production site.

Sec. 3715.023. (A) A cottage food production operation and a maple syrup or sorghum processor and beekeeper described in division (A) of section 3715.021 of the Revised Code shall label each of their food products and include the following information on the label of each of their food products:

(1) The name and address of the business of the cottage food production operation, processor, or beekeeper;

(2) The name of the food product;

(3) The ingredients of the food product, in descending order of predominance by weight;

(4) The net weight and volume of the food product;

(5) In the case of a cottage food production operation, the following statement in ten-point type: "This product is home produced."

(B) Food products identified and labeled in accordance with division (A) of this section are acceptable food products that a retail food establishment or food service operation licensed under Chapter 3717. of the

Revised Code may offer for sale or use in preparing and serving food.

Sec. 3715.024. (A) A maple syrup or sorghum processor and beekeeper described in division (A) of section 3715.021 of the Revised Code may request that the director of agriculture conduct a voluntary inspection of the processor's or beekeeper's facilities. After the inspection is completed, if the inspector determines that the facilities comply with the rules adopted by the director pursuant to division (B) of this section, the processor or beekeeper may place on the label required under section 3715.023 of the Revised Code a seal of conformity and inspection of the department of agriculture.

(B) The director shall adopt rules in accordance with Chapter 119. of the Revised Code that establish the following:

(1) Standards that maple syrup or sorghum processors and beekeepers must satisfy in order to be permitted to place on the label of their food products a seal of conformity and inspection of the director, as described in division (A) of this section;

(2) The seal of conformity and inspection to be used for purposes described in division (A) of this section.

Sec. 3715.025. (A) A cottage food production operation shall not process acidified foods, low acid canned foods, or potentially hazardous foods.

(B) The director of agriculture shall adopt rules in accordance with Chapter 119. of the Revised Code specifying the food items a cottage food production operation may produce that are in addition to the food items identified by name in division (A)(20) of section 3715.01 of the Revised Code. The director shall not adopt rules that permit a cottage food production operation to produce any food that is a potentially hazardous food.

Sec. 3715.59. Food is adulterated within the meaning of sections 3715.01, 3715.02, 3715.022, and 3715.52 to 3715.72 of the Revised Code, if any of the following apply:

(A) It bears or contains any poisonous or deleterious substance that may render it injurious to health; but in case the substance is not an added substance, the food shall not be considered adulterated if the quantity of the substance in the food does not ordinarily render it injurious to health.

(B) It bears or contains any added poisonous or added deleterious substance that is unsafe within the meaning of section 3715.62 of the Revised Code.

(C) It consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.

(D) It has been produced, processed, prepared, packed, or held under

unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health.

(E) It is the product of a diseased animal or an animal that has died otherwise than by slaughter, or an animal that has been fed upon the uncooked offal from a slaughterhouse.

(F) Its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health.

(G) Any valuable constituent has been, in whole or in part, omitted or abstracted from the food.

(H) Any substance has been substituted wholly or in part for the food.

(I) Damage or inferiority has been concealed in any manner.

(J) Any substance has been added to or mixed or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is.

(K) It is confectionery and it bears or contains any alcohol or nonnutritive article or substance other than harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per cent, harmless natural wax not in excess of four-tenths of one per cent, harmless natural gum, or pectin, except that this division shall not apply to any confectionery by reason of its containing less than one-half of one per cent by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(L) It bears or contains a coal-tar color other than one from a batch certified under authority of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended.

(M) It has been processed or produced in violation of section 3715.025 of the Revised Code.

Sec. 3715.60. Food is misbranded within the meaning of sections 3715.01, 3715.02, 3715.022, and 3715.52 to 3715.72 of the Revised Code, if:

(A) Its labeling is false or misleading in any particular.

(B) It is offered for sale under the name of another food.

(C) Its container is so made, formed, or filled as to be misleading.

(D) It is an imitation of another food, unless its label bears in type of uniform size and prominence, the word "imitation," and immediately thereafter the name of the food imitated.

(E) When it is in package form, it does not bear a label containing:

(1) The name and place of business of the manufacturer, packer, or

distributor;

(2) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that reasonable variations shall be permitted, and exemptions as to small packages shall be established by rules adopted by the director of agriculture;

(3) In the case of food subject to section 3715.023 of the Revised Code, the information specified in that section.

(F) Any word, statement, or other information required by or under authority of sections 3715.01, 3715.02, and 3715.52 to 3715.72 of the Revised Code, to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(G) It purports to be, or is represented as, a food for which a definition and standard of identity have been prescribed by statute, or by any rule adopted under an existing statute, or by rule as provided by section 3715.02 of the Revised Code, unless:

(1) It conforms to such definition and standard.

(2) Its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such statute or rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

(H) It purports to be or is represented as:

(1) A food for which a standard of quality has been prescribed by rule as provided by section 3715.02 of the Revised Code and its quality falls below the standard unless its label bears, in the manner and form that the rules specify, a statement that it falls below the standard;

(2) A food for which a standard or standards of fill of container have been prescribed by rule as provided by section 3715.02 of the Revised Code, and it falls below the standard of fill of container applicable thereto, unless its label bears, in the manner and form that the rules specify, a statement that it falls below the standard.

(I) It is not subject to the provisions of division (G) of this section, unless it bears labeling clearly giving:

(1) The common or usual name of the food, if any;

(2) In case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided, that, to the extent that compliance

with the requirements of division (I)(2) of this section is impractical or results in deception or unfair competition, exemptions shall be established by rules adopted by the director; and provided that these requirements shall not apply to any carbonated beverage of which a full and correct statement of the ingredients, to the extent prescribed by division (I)(2) of this section, has been filed under oath with the director.

(J) It purports to be or is represented to be for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as is provided by rules proposed by the director and adopted by the public health council, as necessary, in order to fully inform purchasers as to its value for such uses.

(K) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this division is impracticable, exemptions shall be established by rules proposed by the director and adopted by the public health council.

Sec. 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~~ is stored, processed, prepared, manufactured, or otherwise held or handled for retail sale. Except when expressly provided otherwise, "retail food establishment" includes a mobile retail food establishment, 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, other than a mobile 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. 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.

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.

(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 or a retail food establishment, and delivered to the customer by a person other than an employee of the food service operation or retail food establishment that prepared the food.

(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, 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~~ a food service operation that does not remain at any one location for more than forty consecutive days and serves, in a manner consistent with division (F) of this section, 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.

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

(K) "Temporary food service operation" means a food service operation 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 3717.43 of the Revised Code.

(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.

(Q) "Mobile retail food establishment" means a retail food establishment that is operated from a movable vehicle or other portable structure, and that routinely changes location, except that if the establishment operates from any one location for more than forty consecutive days, the establishment is no longer a mobile retail food establishment.

(R) "Unprocessed," when used with respect to fruits and vegetables, means that the fruits and vegetables are not processed beyond merely rough trimming and rinsing.

(S) "Cottage food production operation" has the same meaning as in division (A)(20) of section 3715.01 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 interpretation of rules adopted under this chapter and making recommendations regarding the issues;

(4) Reviewing all comments on and requests for interpretation of the Ohio uniform food safety code, as submitted by any holder of a license issued under this chapter or any other person or government entity;

(5) Making recommendations to the director of agriculture and director of health for use in issuing joint letters of opinion pursuant to section 3717.041 of the Revised Code;

(6) 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)~~(7) 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)~~(8) 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.

(C) In fulfilling its duties under division (A)(4) of this section, the council shall accept comments and requests regardless of whether they are made publicly or anonymously. For purposes of accepting comments and requests at times other than council meetings, the council shall maintain and publicize a mailing address.

Sec. 3717.041. To assist in the uniform application of the rules adopted under this chapter, the director of agriculture and director of health shall jointly issue a letter of opinion when issuance of a letter of opinion is recommended by the retail food safety advisory council under section 3717.03 of the Revised Code. A letter of opinion shall be issued not later than sixty days after the date the recommendation is received from the council.

Each letter of opinion shall provide a detailed interpretation of the rules that are the subject of the retail food safety advisory council's recommendation. Unless rules are adopted under this chapter that override the interpretation expressed in a letter of opinion, the interpretation shall be binding and applied uniformly throughout this state.

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~~ service 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~~ twelve 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. 3717.07. (A) 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.

(B) The rules shall include provisions that do all of the following:

(1) Provide for calculations to be made according to fiscal years rather than licensing periods;

(2) Limit the direct costs that may be attributed to the use of sanitarians by establishing appropriate statewide averages that may not be exceeded;

(3) Limit the indirect costs that may be included in the calculation of fees to an amount that does not exceed thirty per cent of the cost of the licensing program;

(4) Provide for a proportionate reduction in the fees to be charged if a licensor included anticipated costs in the immediately preceding calculation of licensing fees and the total amount of the anticipated costs was not incurred;

(5) Provide for a proportionate reduction in the fees to be charged if it is discovered through an audit by the auditor of state or through any other means that the licensor has charged or is charging a licensing fee that exceeds the amount that should have been charged;

(6) Provide for a twenty per cent reduction in the fees to be charged when the reduction is imposed as a penalty under division (C) of section 3717.071 of the Revised Code;

(7) 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. 3717.071. (A) The director of agriculture and director of health shall prescribe forms for use in calculating the licensing fees that may be charged under sections 3717.25 and 3717.45 of the Revised Code. Each licensor that charges licensing fees shall use the forms in calculating its

costs according to the uniform methodologies established in rules adopted under section 3717.07 of the Revised Code.

(B)(1) If the licensor is a board of health, the board shall submit the form to the director of agriculture in the case of fees being charged for retail food establishment licenses, and to the director of health in the case of fees being charged for food service operation licenses. The board shall submit the form to the appropriate director not later than the first day of the fiscal year in which the fees will apply. A form that is mailed to the director shall be considered to have been submitted on its postmark date.

(2) On receipt of a form from a board of health, the director of agriculture or director of health shall review the form to determine if the board has calculated its fees in accordance with the uniform methodologies. The director may request that the auditor of state conduct an audit of the board to determine if the fees it established are appropriate. The audit is in addition to the annual or biennial audit conducted pursuant to division (A) of section 117.11 of the Revised Code, and the cost of the audit is the responsibility of the board of health. If at any time the director of agriculture or director of health has reasonable cause to believe that a different audit of a board of health is in the public interest, the director may request that the auditor of state conduct the audit. If the audit is conducted, the cost of the audit is the responsibility of the board of health.

(C)(1) If a board of health fails to submit the forms as required under division (B)(1) of this section and the failure has occurred not more than twice in the immediately preceding five-year period, the board is subject to the following penalties:

(a) If the form is late by one but not more than five working days, a fine of fifty dollars for each working day the form is late;

(b) If the form is late by six working days but not more than ten working days, a fine of one hundred dollars for each working day the form is late;

(c) If the form is late by more than ten working days, the board shall reduce by twenty per cent the fees it charges under section 3717.25 or 3717.45 of the Revised Code during the next succeeding fiscal year.

(2) If a board fails to submit the forms and the failure has occurred more than twice in the immediately preceding five-year period, the board shall reduce by twenty per cent the fees it charges under section 3717.25 or 3717.45 of the Revised Code during the next succeeding fiscal year.

(3) A board of health that is required to pay a fine or reduce its licensing fees shall not include any part of the cost of the penalty in the fees it charges under section 3717.25 or 3717.45 of the Revised Code or the fees it charges in operating any other licensing program.

Sec. 3717.11. (A) Each board of health shall be surveyed for the purpose of determining whether the board 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. 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 shall be surveyed by each director at least once every three years. Surveys shall be conducted in accordance with rules adopted under 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 a survey demonstrates that the board is qualified and has the requisite capacity, the director conducting the survey shall approve the board as the licenser of retail food establishments or food service operations, whichever is being considered, for the district the board serves. If a survey demonstrates that a board is not qualified or does not have the requisite capacity, the director conducting the survey shall not approve the board as a licenser, or shall revoke the director's approval, whichever is appropriate. 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 denied or revoked, the director taking the action shall designate an alternative licenser for the health district served by the board. The alternative licenser shall be a board of health that is qualified and has the requisite capacity to serve as alternative licenser, 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 licenser.

(B) When the approval of a board is revoked, all valid licenses issued by that board for retail food establishments or food service operations, whichever have been affected, shall be treated as though issued by the alternative licenser. The licenses shall remain valid until scheduled to expire unless earlier suspended or revoked by the alternative licenser.

(C) All fees charged under section 3717.25 or 3717.45 of the Revised Code that have not been expended by a board that has had its approval revoked shall be transferred to the alternative licenser. A board of health

cting 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 in the general operations fund created in section 3701.83 of the Revised Code. All subsequent fees charged in the district by the alternative licensor 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 is acting as licensor.

(D)(1) A board 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 has taken and a proposed plan of action to remedy any remaining causes of the revocation. The director may reinstate the board as a licensor if all of the following occur:

(a) The board 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, if those costs exceed the moneys available under division (C) of this section for the district;

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

(c) The alternative licensor consents to the reinstatement.

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

Sec. 3717.111. (A) A board of health acting as a licensor of retail food establishments or food service operations may withdraw from serving as licensor of either or both. Before withdrawing as licensor, the board shall provide written notice of its intent to withdraw. If the withdrawal applies to the licensing of retail food establishments, the board shall provide the notice to the director of agriculture. If the withdrawal applies to the licensing of food service operations, the board shall provide the notice to the director of health. On receipt of the notice, the responsible director shall designate an alternative licensor for the health district served by the board. 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 of agriculture or director of health, as appropriate, shall act as the alternative licensor.

(B) When a board withdraws as licensor, all valid licenses issued by that board for retail food establishments or food service operations, whichever have been affected, shall be treated as though issued by the alternative licensor. The licenses shall remain valid until scheduled to expire unless earlier suspended or revoked by the alternative licensor.

(C) All fees charged under section 3717.25 or 3717.45 of the Revised Code that have not been expended by a board that has withdrawn as licensor shall be transferred to the alternative licensor. 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 in the general operations fund created in section 3701.83 of the Revised Code. All subsequent fees charged in the district by the alternative licensor 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 is acting as licensor.

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); or (11); ~~or (12)~~ to (13) 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 processing 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~~ business, including ~~an operation~~ a business or that portion of ~~an operation~~ a business 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~~ establishment with commercially prepackaged foods that are not potentially hazardous and contained in displays, the total space

of which equals less than ~~one~~ two hundred cubic feet;

(2) A ~~storage facility of less than five hundred square feet containing prepackaged foods that are not potentially hazardous;~~ person at a farmers market that is registered with the director of agriculture pursuant to section 3717.221 of the Revised Code that offers for sale only one or more of the following:

(a) Fresh unprocessed fruits or vegetables;

(b) Products of a cottage food production operation;

(c) Maple syrup, sorghum, or honey that is produced by a maple syrup or sorghum producer or beekeeper described in division (A) of section 3715.021 of the Revised Code;

(d) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet on the premises where the person conducts business at the farmers market.

(3) A ~~roadside market that~~ person who offers for sale at a roadside stand 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 that~~ 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. This exemption extends to any individual or group raising all of its funds during the ~~display~~ time periods specified in division (B)(4) of this section for the benefit of the nonprofit organization by selling ~~displayed~~ foods under the same conditions.

(5) An establishment that offers food contained in displays of less than five hundred square feet, and if required to be licensed would be classified as risk level one pursuant to rules establishing licensing categories for retail food establishments adopted under section 3717.33 of the Revised Code, on the condition that the establishment offers the food for sale at retail not more than six months in each calendar year;

(6) A cottage food production operation, on the condition that the operation offers its products directly to the consumer from the site where the products are produced;

(7) A maple syrup and sorghum processor and beekeeper described in division (A) of section 3715.021 of the Revised Code, on the condition that the processor or beekeeper offers only maple syrup, sorghum, or honey directly to the consumer from the site where those products are processed;

(8) A person who annually maintains five hundred or fewer birds, on the

condition that the person offers the eggs from those birds directly to the consumer from the location where the eggs are produced or at a farm product auction to which division (B)(11) of this section applies;

(9) A person who annually raises and slaughters one thousand or fewer chickens, on the condition that the person offers dressed chickens directly to the consumer from the location where the chickens are raised and slaughtered or at a farm product auction to which division (B)(11) of this section applies;

(10) A person who raises, slaughters, and processes the meat of nonamenable species described in divisions (A) and (B) of section 918.12 of the Revised Code, on the condition that the person offers the meat directly to the consumer from the location where the meat is processed or at a farm product auction to which division (B)(11) of this section applies;

(11) A farm product auction, on the condition that it is registered with the director pursuant to section 3717.221 of the Revised Code that offers for sale at the farm product auction only one or more of the following:

(a) The products described in divisions (B)(8) to (10) of this section that are produced, raised, slaughtered, or processed, as appropriate, by persons described in divisions (B)(8) to (10) of this section;

(b) Fresh unprocessed fruits or vegetables;

(c) Products of a cottage food production operation;

(d) Maple syrup, sorghum, or honey that is produced by a maple syrup or sorghum producer or beekeeper described in division (A) of section 3715.021 of the Revised Code.

(12) An establishment that, with respect to offering food for sale, offers only alcoholic beverages or prepackaged beverages that are not potentially hazardous;

(13) An establishment that, with respect to offering food for sale, offers only alcoholic beverages, prepackaged beverages that are not potentially hazardous, or commercially prepackaged food that is not potentially hazardous, on the condition that the commercially prepackaged food is contained in displays, the total space of which equals less than two hundred cubic feet on the premises of the establishment;

(14) An establishment that, with respect to offering food for sale, offers only fountain beverages that are not potentially hazardous;

(15) A person who offers for sale only one or more of the following foods at a festival or celebration, on the condition that the festival or celebration is organized by a political subdivision of the state and lasts for a period not longer than seven consecutive days:

(a) Fresh unprocessed fruits or vegetables;

(b) Products of a cottage food production operation;

(c) Maple syrup, sorghum, or honey if produced by a maple syrup or sorghum processor or beekeeper as described in division (A) of section 3715.021 of the Revised Code;

(d) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet;

(e) Fruit butter produced at the festival or celebration and sold from the production site.

(16) A farm market on the condition that it is registered with the director pursuant to section 3717.221 of the Revised Code that offers for sale at the farm market only one or more of the following:

(a) Fresh unprocessed fruits or vegetables;

(b) Products of a cottage food production operation;

(c) Maple syrup, sorghum, or honey that is produced by a maple syrup or sorghum producer or beekeeper described in division (A) of section 3715.021 of the Revised Code;

(d) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet on the premises where the person conducts business at the farm market;

(e) Cider and other juices manufactured on site at the farm market;

(f) The products or items described in divisions (B)(8) to (10) of this section, on the condition that those products or items were produced by the person offering to sell them, and further conditioned that, with respect to eggs offered, the person offering to sell them annually maintains five hundred or fewer birds, and with respect to dressed chickens offered, the person annually raises and slaughters one thousand or fewer chickens.

Sec. 3717.221. (A) Any of the following may register with the director of agriculture:

(1) A farm market, which is a location where a producer offers fruits, vegetables, and other items for sale;

(2) A farmers market, which is a location where producers congregate to offer fruits, vegetables, and other items for sale;

(3) A farm product auction, which is a location where agricultural products, including food products, are offered for sale at auction.

(B) The director shall inspect each farm market, farmers market, and farm product auction that registers under this section. Inspections shall occur at a frequency considered appropriate by the director and shall be conducted in accordance with sanitation standards established in rules adopted under

this section.

(C) The director shall adopt rules in accordance with Chapter 119. of the Revised Code as necessary to administer this section.

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

(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. If the license is for a mobile retail food establishment, the licensor shall post the establishment's layout, equipment, and items to be sold on the back of the license.

A mobile retail food establishment license issued by one licensor shall be recognized by all other licensors in this state.

(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 mobile or 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 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 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 mobile or seasonal retail food establishment, the first day of operation in a new licensing period, the licensor shall assess a penalty ~~of~~. The amount of the penalty shall be the lesser of fifty dollars or 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.

(F) 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. Limitations pertaining to a mobile retail food establishment shall be posted on the back of the license.

(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. 3717.25. (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, other than mobile and temporary 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. 3717.27. (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~~ license holder 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.

A licensor may inspect any mobile retail food establishment being operated within the licensor's district. If an inspection of a mobile retail food

establishment is conducted by a licensor other than the licensor that issued the license for the establishment, 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 3717.29 or 3717.30 of the Revised Code.

(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. 3717.29. (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. If the license holder is operating a mobile retail food establishment, either the licensor that issued the license or the licensor for the health district in which the establishment is being operated may suspend the license.

A suspension under division (D)(1) of this section takes effect immediately and remains in effect until the board rescinds the suspension. When a mobile retail food establishment 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 license holder written notice of the next location at which the license holder proposes to operate the retail food establishment.

After suspending a license under division (D)(1) of this section, the licensor 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. In the case of a suspension of a mobile retail food establishment, the appeal shall be made to the licensor that suspended the license.

(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. 3717.42. (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~~ 3717.24 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~~ business, including ~~an operation~~ a business or that portion of ~~an operation~~ a business 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. This exemption extends to any individual or group raising all of its funds during the time periods specified in division (B)(5) of this section for the benefit of the church, school, or organization by preparing or serving food intended for individual portion service under the same conditions.

(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.

(13) A private home that prepares and offers food to guests, if the home is owner-occupied, meals are served on the premises of that home, the number of meals served does not exceed one hundred fifteen per week, and the home displays a notice in a place conspicuous to all of its guests informing them that the home is not required to be licensed as a food service operation;

(14) An individual who prepares full meals or meal components, such as pies or baked goods, in the individual's home to be served off the premises of that home, if the number of meals or meal components prepared for that purpose does not exceed twenty in a seven-day period.

Sec. 3717.43. (A) 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~~ An application for a food service operation ~~licenses~~ license, other than ~~those an application~~ an application for a mobile ~~and or~~ catering food service operation ~~licenses~~ license, shall be submitted to the licensor for the health district in which the food service operation is located. ~~Applications~~ An application for a mobile food service operation ~~licenses~~ license 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~~ An application for a catering food service operation ~~licenses~~ license shall be submitted to the licensor for the district where the applicant's base of operation is located.

(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 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 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 expires at the end of the licensing period for which the license is issued, 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.

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

(D) A food service operation license may be renewed, except that a temporary food service operation license is not renewable. ~~Applications~~ A person or government entity seeking license renewal shall submit an application 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, except that in the case of a mobile and or seasonal food service operation licenses the renewal application shall be submitted prior to before~~ 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~~. The amount of the penalty shall be the lesser of fifty dollars or 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) A licensor may issue not more than ten temporary food service operation 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 food service operation license to the same 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 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) 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 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. 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 as a retail food establishment or a food service operation pursuant to ~~section 3717.43~~ Chapter 3717. of the Revised Code and operate as a restaurant for purposes of this chapter.

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 of 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~~ of a retail food establishment or a food service operation licensed pursuant to ~~section 3717.43~~ Chapter 3717. of the Revised Code that operates as a restaurant for purposes of this chapter, 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~~ of a retail food establishment or a food service operation licensed pursuant to ~~section 3717.43~~ Chapter 3717. of the Revised Code that operates as a restaurant for purposes of this chapter, 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~~ of a retail food establishment or a food service operation licensed pursuant to ~~section 3717.43~~ Chapter 3717. of the Revised Code that operates as a restaurant for purposes of this chapter, or of 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. 4303.18. Permit D-5 may be issued to the owner or operator of a retail food establishment or a food service operation licensed pursuant to Chapter 3717. of the Revised Code that operates as a restaurant or night club for purposes of this chapter, 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. A person who is the holder of both a D-3 and D-3a permit need not obtain a D-5 permit. The fee for this permit is one thousand eight hundred seventy-five dollars.

Sec. 4303.181. (A) Permit D-5a may be issued either to the owner or operator of a hotel or motel that is required to be licensed under section 3731.03 of the Revised Code, that contains at least fifty rooms for registered transient guests, and that 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 that is~~ retail food establishment or a food service operation licensed pursuant to section 3717.43 Chapter 3717. of the Revised Code; that operates as a restaurant for purposes of this chapter and that is affiliated with the hotel or motel and within or contiguous to the hotel or motel, and that serves 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 in this division, 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 that may be issued.

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

rs.

(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 division, 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 of that floor area, 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 of that payment, 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 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 that is~~ retail food establishment or a food service operation licensed pursuant to ~~section 3717.43~~ Chapter 3717, of the Revised Code ~~that operates as a restaurant for purposes of this chapter~~ and that 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 in this division, 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 that is~~ retail food establishment or a food service operation licensed pursuant to ~~section 3717.43~~ Chapter 3717, of the Revised Code ~~that operates as a restaurant for purposes of this chapter~~, shall have operated the restaurant at the proposed premises for not less than twenty-four consecutive months immediately preceding the filing of the application for the permit, 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 the application for the permit. In addition to these requirements, the proposed D-5c permit premises shall be located within a municipal corporation and further within an election precinct that, at the time of the application, 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 that 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~~ retail food establishment or a food service operation licensed pursuant to ~~section 3717.43~~ Chapter 3717, of the Revised Code ~~that operates as a restaurant for purposes of this chapter and that is~~ 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 that 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 that 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 that 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 retail food establishment or a food service operation that is licensed under section 3717.43 Chapter 3717.~~ of the Revised Code that operates as a restaurant for purposes of this chapter and that meets all of the following:

- (1) It contains not less than twenty-five hundred square feet of floor area.
- (2) It is located on or in, or immediately adjacent to, the shoreline of, a navigable river.
- (3) It provides docking space for twenty-five boats.
- (4) It 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 that is also a "navigable water" as 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 retail food establishment or a food service operation that is licensed under section 3717.43 Chapter 3717.~~ Chapter 3717. of the Revised Code that operates as a restaurant for purposes of this chapter and 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 four 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 seven 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 this division, 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.

(J)(1) Permit D-5j may be issued to ~~either~~ the owner or the operator of a retail food establishment or a food service operation that is licensed under section 3717.43 Chapter 3717. of the Revised Code 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 beer and intoxicating liquor 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-5j permit may exercise the same privileges, and shall observe the same hours of operation, as the holder of a D-5 permit.

(2) The D-5j permit shall be issued only within a community entertainment district that is designated under section 4301.80 of the Revised Code and that is located in a municipal corporation with a population of at least one hundred thousand.

(3) The location of a D-5j permit may be transferred only within the geographic boundaries of the community entertainment district in which it was issued and shall not be transferred outside the geographic boundaries of that district.

(4) Not more than one D-5j permit shall be issued within each community entertainment district for each five acres of land located within the district. Not more than fifteen D-5j permits may be issued within a single community entertainment district. Except as otherwise provided in division (J)(4) of this section, no quota restrictions shall be placed upon the number of D-5j permits that may be issued.

(5) The fee for a D-5j permit is one thousand eight hundred seventy-five

dollars.

Sec. 4303.182. (A) Except as otherwise provided in divisions (B) to (F) of 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, D-5j, or D-7 permit to allow sale under that permit between the hours of ten a.m. and midnight, or between the hours of one p.m. and midnight, on Sunday, as applicable, if that sale has been authorized under section 4301.361, 4301.364, 4301.365, or 4301.366 of the Revised Code and under the restrictions of that authorization.

(B) 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 ten a.m. and midnight on Sunday, whether or not that sale has been authorized under section 4301.361, 4301.364, 4301.365, or; 4301.366 of the Revised Code.

(C) 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 that is required to be licensed under section 3731.03 of the Revised Code, that contains at least fifty rooms for registered transient guests, and that has on its premises a ~~restaurant~~ retail food establishment or a food service operation licensed pursuant to ~~section 3717.43~~ Chapter 3717. of the Revised Code that operates as a restaurant for purposes of this chapter and is 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 ten a.m. and midnight on Sunday, whether or not that sale has been authorized under section 4301.361, 4301.364, 4301.365, or; 4301.366 of the Revised Code.

(D) The holder of a D-6 permit that is issued to a sports facility may make sales under the permit between the hours of eleven a.m. and midnight on any Sunday on which a professional baseball, basketball, football, hockey, or soccer game is being played at the sports facility. As used in this division, "sports facility" means a stadium or arena that has a seating capacity of at least four thousand and that is owned or leased by a professional baseball, basketball, football, hockey, or soccer franchise or any combination of those franchises.

(E) Permit D-6 shall be issued to the holder of any permit that authorizes the sale of beer or intoxicating liquor and that is issued to a premises located in or at the Ohio historical society area or the state

fairgrounds, as defined in division (B) of section 4301.40 of the Revised Code, to allow sale under that permit between the hours of ten a.m. and midnight on Sunday, whether or not that sale has been authorized under section 4301.361, 4301.364, 4301.365, or 4301.366 of the Revised Code.

(F) Permit D-6 shall be issued to the holder of any permit that authorizes the sale of intoxicating liquor and that is issued to an outdoor performing arts center to allow sale under that permit between the hours of one p.m. and midnight on Sunday, whether or not that sale has been authorized under section 4301.361 of the Revised Code. A D-6 permit issued under this division is subject to the results of an election, held after the D-6 permit is issued, on question (B)(4) as set forth in section 4301.351 of the Revised Code. Following the end of the period during which an election may be held on question (B)(4) as set forth in that section, sales of intoxicating liquor may continue at an outdoor performing arts center under a D-6 permit issued under this division, unless an election on that question is held during the permitted period and a majority of the voters voting in the precinct on that question vote "no."

As used in this division, "outdoor performing arts center" means an outdoor performing arts center that is located on not less than eight hundred acres of land and that is open for performances from the first day of April to the last day of October of each year.

(G) 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 that affidavit to have been false, it shall revoke the permits of the permit holder at the premises concerned.

(H) 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, D-5j, 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 retail food establishment or a food service operation required to be licensed under ~~section 3717.43~~ Chapter 3717. of the Revised Code that operates as a restaurant for purposes of this chapter 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 governmental 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 retail food establishment or a food service operation, required to be licensed under section ~~3717.43~~ Chapter 3717. of the Revised Code, that operates as a restaurant for purposes of this chapter, at such new location.

SECTION 2. That existing sections 3709.02, 3709.03, 3709.05, 3709.07, 3715.01, 3715.021, 3715.59, 3715.60, 3717.01, 3717.03, 3717.05, 3717.07, 3717.11, 3717.22, 3717.23, 3717.25, 3717.27, 3717.29, 3717.42, 3717.43, 4303.021, 4303.13, 4303.14, 4303.15, 4303.18, 4303.181, 4303.182, and 4303.183 of the Revised Code are hereby repealed.

SECTION 3. The amendments made by this act to sections 3709.02, 3709.03, 3709.05, and 3709.07 of the Revised Code with respect to the membership of boards of health do not affect the terms of the board members holding office on the effective date of this act. After that date, the first vacancy that occurs, other than a vacancy to be filled by a physician, shall be filled by a member selected by the health district licensing council pursuant to section 3709.41 of the Revised Code, as enacted by this act. Until that vacancy is filled, the health district licensing council shall ensure that at least one of its members attends all meetings of the board.

SECTION 4. Section 3709.02 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 117 and Am. Sub. H.B. 355 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

SECTION 5. Section 3709.05 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 117 and Am. Sub. H.B. 355 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

SECTION 6. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that licensure requirements are posing an undue economic burden upon small retail food establishments, threatening the livelihood of those employers and their employees. Therefore, this act shall go into immediate effect.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

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

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____