

As Introduced

124th General Assembly
Regular Session
2001-2002

S. B. No. 136

SENATORS Wachtmann, Ryan

A B I L L

To amend sections 3709.03, 3709.05, 3709.07, 3715.01,
3715.021, 3717.01, 3717.05, 3717.11, 3717.22,
3717.25, 3717.42, 3717.45, 4303.021, 4303.13,
4303.14, 4303.15, 4303.18, 4303.181, 4303.182, and
4303.183, to enact new section 3717.07 and sections
3717.041 and 3717.10, and to repeal section 3717.07
of the Revised Code to exempt certain retail food
establishments from the licensing requirement of
the Retail Food Establishments Law, to modify
requirements relative to wholesale food
establishments, to establish new requirements for
cottage food production operations and specified
other food producers, and to declare an emergency.

1
2
3
4
5
6
7
8
9
10
11
12
13
14

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3709.03, 3709.05, 3709.07, 3715.01,
3715.021, 3717.01, 3717.05, 3717.11, 3717.22, 3717.25, 3717.42,
3717.45, 4303.021, 4303.13, 4303.14, 4303.15, 4303.18, 4303.181,
4303.182, and 4303.183 be amended and new section 3717.07 and
sections 3717.041 and 3717.10 of the Revised Code be enacted to
read as follows:

15
16
17
18
19
20

Sec. 3709.03. (A) There is hereby created in each general 21
health district a district advisory council. A council shall 22
consist of the president of the board of county commissioners, the 23
chief executive of each municipal corporation not constituting a 24
city health district, and the president of the board of township 25
trustees of each township. The board of county commissioners, the 26
legislative body of a municipal corporation, and the board of 27
township trustees of a township may select an alternate from among 28
themselves to serve if the president, the chief executive, or the 29
president of the board of township trustees is unable to attend 30
any meeting of the district advisory council. When attending a 31
meeting on behalf of a council member, the alternate may vote on 32
any matter on which the member is authorized to vote. 33

The council shall organize by selecting a chair and secretary 34
from among its members. The council shall adopt bylaws governing 35
its meetings, the transaction of business, and voting procedures. 36

The council shall meet annually in ~~march~~ March at a place 37
determined by the chair and the health commissioner for the 38
purpose of electing the chair and the secretary, appointing a 39
member of the board of health, receiving and considering the 40
annual or special reports from the board of health, and making 41
recommendations to the board of health or to the department of 42
health in regard to matters for the betterment of health and 43
sanitation within the district or for needed legislation. The 44
secretary of the council shall notify the district health 45
commissioner and the director of health of the proceedings of such 46
meeting. 47

Special meetings of the council shall be held on the order of 48
any of the following: 49

(1) The director of health; 50

(2) The board of health; 51

(3) The lesser of five or a majority of district advisory 52
council members. 53

The district health commissioner shall attend all meetings of 54
the council. 55

(B) At its annual meetings, the district advisory council 56
shall appoint one member of the board of health. At least one 57
member of the board of health shall be a physician and at least 58
one member shall be an individual who holds a current license to 59
operate a food service operation under Chapter 3717. of the 60
Revised Code and who is recommended for appointment by the 61
restaurant association serving the region in which the general 62
health district is located. Appointments shall be made with due 63
regard to equal representation of all parts of the district. 64

(C) If at an annual or special meeting at which a member of 65
the board of health is to be appointed fewer than a majority of 66
the members of the district council are present, the council, by 67
the majority vote of council members present, may organize an 68
executive committee to make the appointment. An executive 69
committee shall consist of five council members, including the 70
president of the board of county commissioners, the council chair, 71
the council secretary, and two additional council members selected 72
by majority affirmative vote of the council members present at the 73
meeting. The additional members selected shall include one 74
representative of municipal corporations in the district that are 75
not city health districts and one representative of townships in 76
the district. If an individual is eligible for more than one 77
position on the executive committee due to holding a particular 78
office, the individual shall fill one position on the committee 79
and the other position shall be filled by a member selected by a 80
majority affirmative vote of the council members present at the 81
meeting. A council member's alternate for annual meetings may 82
serve as the member's alternate at meetings of the executive 83

committee.

84

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.

85

86

87

88

89

90

91

92

93

94

95

96

97

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.

98

99

100

101

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, composed of five members appointed by the mayor and confirmed by the legislative authority. At least one member of the board shall be an individual who holds a current license to operate a food service operation under Chapter 3717. of the Revised Code and who is recommended for appointment by the restaurant association serving the region in which the city health district is located.

102

103

104

105

106

107

108

109

110

111

112

113

114

(B) Each member of the board shall be paid a sum not to 115
exceed eighty dollars a day for the member's attendance at each 116
meeting of the board. No member shall receive compensation for 117
attendance at more than eighteen meetings in any year. 118

(C) Each member of the board shall receive travel expenses at 119
rates established by the director of budget and management 120
pursuant to section 126.31 of the Revised Code to cover the actual 121
and necessary travel expenses incurred for travel to and from 122
meetings that take place outside the county in which the member 123
resides, except that any member may receive travel expenses for 124
registration for any conference that takes place inside the county 125
in which the member resides. 126

(D) A majority of the members constitutes a quorum, and the 127
mayor shall be president of the board. 128

(E) The term of office of the members shall be five years 129
from the date of appointment, except that of those first 130
appointed, one shall serve for five years, one for four years, one 131
for three years, one for two years, and one for one year, and 132
thereafter one shall be appointed each year. 133

A vacancy in the membership of the board shall be filled in 134
like manner as an original appointment and shall be for the 135
unexpired term. 136

Sec. 3709.07. Except as provided in section 3709.071 of the 137
Revised Code, when it is proposed that one or more city health 138
districts unite with a general health district in the formation of 139
a single district, the district advisory council of the general 140
health district shall meet and vote on the question of union. It 141
shall require a majority affirmative vote of the members of the 142
district advisory council to carry the question. The legislative 143
authority of each city shall likewise vote on the question. A 144
majority voting affirmatively shall be required for approval. When 145

the majority of the district advisory council and the legislative 146
authority have voted affirmatively, the chair of the council and 147
the chief executive of each city shall enter into a contract for 148
the administration of health affairs in the combined district. 149
Such contract shall state the proportion of the expenses of the 150
board of health or health department of the combined district to 151
be paid by the city or cities and by the original general health 152
district. The contract may provide that the administration of the 153
combined district shall be taken over by either the board of 154
health or health department of one of the cities, by the board of 155
health of the general health district, or by a combined board of 156
health. Such contract shall prescribe the date on which such 157
change of administration shall be made. A copy of such contract 158
shall be filed with the director of health. 159

The combined district shall constitute a general health 160
district, and the board of health or health department of the 161
city, the board of health of the original general health district, 162
or the combined board of health, as may be agreed in the contract, 163
shall have, within the combined district, all the powers granted 164
to, and perform all the duties required of, the board of health of 165
a general health district. 166

The district advisory council of the combined general health 167
district shall consist of the members of the district advisory 168
council of the original general health district and the chief 169
executive of each city constituting a city health district, each 170
member having one vote. 171

If the contract provides that the administration of the 172
combined district shall be taken over by a combined board of 173
health, rather than the board of health of the original health 174
district, the contract shall set forth the number of members of 175
such board, their terms of office, and the manner of appointment 176
or election of officers. One of the members of such combined board 177

of health shall be a physician, and one member shall be an
individual who holds a current license to operate a food service
operation under Chapter 3717. of the Revised Code and who is
recommended for appointment by a restaurant association serving
the region in which the combined district is located. 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 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. 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:	207
(a) Articles recognized in the United States pharmacopoeia	208
and national formulary, or any supplement to them;	209
(b) Articles intended for use in the diagnosis, cure,	210
mitigation, treatment, or prevention of disease in humans or	211
animals;	212
(c) Articles, other than food, intended to affect the	213
structure or any function of the body of humans or other animals;	214
(d) Articles intended for use as a component of any of the	215
foregoing articles, other than devices or their components, parts,	216
or accessories.	217
(5) "Device," except when used in division (B)(1) of this	218
section and in division (A)(10) of section 3715.52, division (F)	219
of section 3715.60, division (A)(5) of section 3715.64, and	220
division (C) of section 3715.67 of the Revised Code, means any	221
instrument, apparatus, implement, machine, contrivance, implant,	222
in vitro reagent, or other similar or related article, including	223
any component, part, or accessory, that is any of the following:	224
(a) Recognized in the United States pharmacopoeia and	225
national formulary, or any supplement to them;	226
(b) Intended for use in the diagnosis of disease or other	227
conditions, or in the cure, mitigation, treatment, or prevention	228
of disease in humans or animals;	229
(c) Intended to affect the structure or any function of the	230
body of humans or animals, and that does not achieve any of its	231
principal intended purposes through chemical action within or on	232
the body of humans or animals and is not dependent upon being	233
metabolized for the achievement of any of its principal intended	234
purposes.	235
(6) "Cosmetic" means:	236

(a) Articles intended to be rubbed, poured, sprinkled, or 237
sprayed on, introduced into, or otherwise applied to the human 238
body or any part thereof for cleansing, beautifying, promoting 239
attractiveness, or altering the appearance; 240

(b) Articles intended for use as a component of any such 241
article, except that "cosmetic" does not include soap. 242

(7) "Label" means a display of written, printed, or graphic 243
matter upon the immediate container, exclusive of package liners, 244
of any article. 245

Any word, statement, or other information required by this 246
chapter to appear on the label must appear on the outside 247
container or wrapper, if any, of the retail package of the 248
article, or the label must be easily legible through the outside 249
container or wrapper. 250

(8) "Labeling" means all labels and other written, printed, 251
or graphic matter: 252

(a) Upon an article or any of its containers or wrappers; 253

(b) Accompanying such article. 254

(9) "Advertisement" means all representations disseminated in 255
any manner or by any means, other than by labeling, for the 256
purpose of inducing, or that are likely to induce, directly or 257
indirectly, the purchase of food, drugs, devices, or cosmetics. 258

(10) "New drug" means: 259

(a) Any drug the composition of which is such that the drug 260
is not generally recognized among experts qualified by scientific 261
training and experience to evaluate the safety of drugs, as safe 262
for use under the conditions prescribed, recommended, or suggested 263
in the labeling thereof; 264

(b) Any drug the composition of which is such that the drug, 265
as a result of investigation to determine its safety for use under 266

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; 298 299

(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. 300 301 302 303

(15) "Dangerous drug" has the same meaning as in section 4729.01 of the Revised Code. 304 305

(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. 306 307 308 309 310 311 312 313 314 315 316

No drug shall be considered a generically equivalent drug for the purposes of this chapter if it has been listed by the federal food and drug administration as having proven bioequivalence problems. 317 318 319 320

(17) "Licensed health professional authorized to prescribe drugs" and "prescriber" have the same meanings as in section 4729.01 of the Revised Code. 321 322 323

(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 324 325 326 327 328

kitchen within the residence.

(19) "Potentially hazardous food" means a food that is
natural or synthetic, with a pH level greater than 4.6 or a water
activity value greater than 0.85, or that 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
raw shell eggs, the growth of salmonella enteritidis.

(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:

(1) "wholesale food Food processing establishment" means a premises or part of a premises where food is processed, packaged, manufactured, or otherwise held or handled for distribution or 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 392
processor; a processor of sorghum who processes sorghum juice when 393
a minimum of seventy-five per cent of the sorghum juice used to 394
produce the sorghum is extracted directly from sorghum plants by 395
that processor; or a beekeeper who jars honey when a minimum of 396
seventy-five per cent of the honey is from that beekeeper's own 397
hives. 398

(2) "Cottage food production operation" means a person who, 399
in the person's home, produces food items including, but not 400
limited to, bakery products that are not potentially hazardous 401
foods, jams, jellies, candy, apple butter, and similar products as 402
defined by rules adopted pursuant to division (G)(3) of this 403
section. 404

(B) The director of agriculture shall adopt rules in 405
accordance with Chapter 119. of the Revised Code and Title 21 of 406
the Code of Federal Regulations that establish, when otherwise not 407
established by the Revised Code, ~~standards~~ good manufacturing 408
practices for ~~wholesale~~ food processing establishments, including 409
the facilities of ~~wholesale~~ food processing establishments and 410
their sanitation. 411

A business or that portion of a business that is regulated by 412
the department of agriculture under Chapter 917. or 918. of the 413
Revised Code is not subject to regulation under this section as a 414
~~wholesale~~ food processing establishment. 415

(C) All food products, including those produced and packaged 416
by a cottage food production operation, and all packaged maple 417
syrup, sorghum, and honey, are subject to food sampling conducted 418
by the director of agriculture, or a representative the director 419
authorizes, to determine if a food product is misbranded or 420
adulterated. 421

(D)(1) Except as provided in division (D)(3) of this section, 422
a cottage food production operation and a maple syrup or sorghum 423

processor and beekeeper described in division (A)(1) of this
section shall label each of their food products and include the
following information on the label of each of their food products:

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

(b) The name of the food product;

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

(d) The net weight and volume of the food product, both in
United States and metric measurements.

(2) A cottage food production operation, in addition to
complying with the labeling requirements of division (D)(1) of
this section, also shall include on the label each of the
operation's food products the following statement in ten-point
type: "This product is home produced."

(3) The requirements of division (D)(1) and (2) of this
section do not apply to apple butter that is produced by a cottage
food production operation.

(E) Food products identified and labeled in accordance with
division (D) of this section are acceptable food products that may
be offered for sale at retail food establishments or food service
operations licensed under Chapter 3717. of the Revised Code.

(F) A maple syrup or sorghum processor and beekeeper
described in division (A)(1) of this section may request that the
director 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 (G) of this section,
the processor or beekeeper may place upon the label of each food
product a seal of conformity and inspection of the department of

agriculture.

(G) The director shall adopt rules in accordance with Chapter 119. of the Revised Code to do all of the following:

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

(2) Adopt a seal of conformity and inspection for purposes described in division (F) of this section;

(3) Define the types of foods that a cottage food production operation may produce in addition to the specific foods listed in division (A)(2) of this section, limiting those foods to only foods that are not potentially hazardous foods.

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

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 484
when expressly provided otherwise, "retail food establishment" 485
includes a seasonal retail food establishment, mobile retail food 486
establishment, and temporary retail food establishment. 487

As used in this division: 488

(1) "Retail" means the sale of food to a person who is the 489
ultimate consumer. 490

(2) "Prepared" means any action that affects a food, 491
including receiving and maintaining it at the temperature at which 492
it was received. 493

(D) "Seasonal retail food establishment" means a retail food 494
establishment that is operated for not more than six months in a 495
licensing period. 496

(E) "Temporary retail food establishment" means a retail food 497
establishment that is operated at an event for not more than five 498
consecutive days, except when operated for more than five 499
consecutive days pursuant to division (E)(2) of section 3717.23 of 500
the Revised Code. 501

(F) "Food service operation" means a place, location, site, 502
or separate area where food intended to be served in individual 503
portions is prepared or served for a charge or required donation. 504
As used in this division, "served" means a response made to an 505
order for one or more individual portions of food in a form that 506
is edible without washing, cooking, or additional preparation and 507
"prepared" means any action that affects a food other than 508
receiving or maintaining it at the temperature at which it was 509
received. 510

Except when expressly provided otherwise, "food service 511
operation" includes a catering food service operation, food 512
delivery sales operation, mobile food service operation, seasonal 513
food service operation, temporary food service operation, and 514

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, and delivered to the customer by a person other than an employee of the food service operation 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~~ June to
the last day of ~~February~~ May 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) "Farm market" means a location, registered with the
director of agriculture pursuant to rules adopted under section
3717.041 of the Revised Code, where a producer offers fruits,
vegetables, and other items for sale.

(S) "Farmers market" means a location, registered with the
director of agriculture pursuant to rules adopted under section
3717.041 of the Revised Code, where producers congregate to offer
fruits, vegetables, and other items for sale.

(T) "Farm product auction" means a location, registered with
the director of agriculture pursuant to rules adopted under
section 3717.041 of the Revised Code, where agricultural products,
including food products, are offered for sale at auction.

(U) "Roadside stand" means a place where only unprocessed
fresh fruits and vegetables are offered for sale.

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

(W) A "cottage food production operation" has the same
meaning as in division (A)(2) of section 3715.021 of the Revised
Code.

Sec. 3717.041. The director of agriculture shall adopt rules
in accordance with Chapter 119. of the Revised Code to establish
procedures to register farm markets, farmers markets, and farm
product auctions.

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. The Ohio uniform
food safety code shall be as specific as is necessary to enable
the holder of a license to operate a retail food establishment or
a food service operation to determine whether the holder is in
compliance with the code and what is required of the holder to
maintain compliance with the code. 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, 636
if a model food code is established by the United States food and 637
drug administration, the Ohio uniform food safety code shall be 638
based on the most current version of the food and drug 639
administration's model food code. If the food and drug 640
administration adopts, modifies, or rescinds a provision in the 641
model food code, not later than ~~nine~~ twelve months after the 642
administration's action, the director of agriculture and public 643
health council shall adopt, amend, or rescind provisions in the 644
Ohio uniform food safety code to ensure that it continues to 645
conform with the model food code. 646

(2) The Ohio uniform food safety code may contain or omit 647
provisions that do not correspond to the food and drug 648
administration's model food code if the director of agriculture or 649
the public health council, with each other's concurrence, 650
determines ~~either~~ any of the following: 651

(a) That rules can be adopted under this chapter that provide 652
protection at least as effective as that which would be provided 653
by basing the rules on the model food code; 654

(b) That local conditions warrant the adoption of standards 655
that are different from the model food code; 656

(c) That rules more specific than the model food code are 657
necessary to enable the holder of a license to operate a retail 658
food establishment or a food service operation to determine 659
whether the holder is in compliance with the rules and what is 660
required of the holder to maintain compliance with the rules. 661

Sec. 3717.07. (A) A licensor shall use data from the 662
licensing period immediately preceding the time when the licensor 663
is calculating costs pursuant to this section to calculate the 664
actual cost of conducting inspections of food service operations 665
and retail food establishments licensed under this chapter by the 666

licensor. The licensor shall calculate the actual cost of
conducting inspections that are attributable to each of the
following components:

(1) Food service operations and retail food establishments
classified as risk level I, risk level II, risk level III, risk
level IV, and risk level V;

(2) Mobile food service operations and mobile retail food
establishments;

(3) Temporary food service operations and temporary retail
food establishments;

(4) Vending machine locations.

(B) The licensor shall calculate the cost attributable to
each component listed in division (A) of this section for
conducting inspections of food service operations and retail food
establishments licensed under this chapter by the licensor. The
licensor shall use a form prescribed by the director of
agriculture and the director of health that includes the following
data:

(1) A list of all inspecting sanitarians who worked in the
component;

(2) The total hours worked in the component by each
inspecting sanitarian;

(3) The total hours that each inspecting sanitarian worked in
the licensing period immediately preceding the time when the
licensor is calculating costs pursuant to this section;

(4) The total annual wages or salary paid to each inspecting
sanitarian;

(5) The total amount for fringe benefits paid on behalf of
each inspecting sanitarian;

<u>(6) The total travel costs for each inspecting sanitarian;</u>	696
<u>(7) The support costs for the component as determined by one</u>	697
<u>of the following methods:</u>	698
<u>(a) Use of actual support cost items, such as salary and</u>	699
<u>fringe benefits of the health commissioner, the director of</u>	700
<u>environmental health, supervisory staff, and clerical staff, and</u>	701
<u>cost of utilities, rent, supplies, equipment, liability insurance,</u>	702
<u>and training;</u>	703
<u>(b) Use of a cost rate of thirty per cent of the wages or</u>	704
<u>salaries and fringe benefits of inspecting sanitarians</u>	705
<u>attributable to the component;</u>	706
<u>(c) Application of a negotiated cost rate and calculation</u>	707
<u>method approved by an agency of the federal government for the</u>	708
<u>licensor to the component.</u>	709
<u>(8) The sampling and laboratory costs for the component other</u>	710
<u>than the costs for the collection and bacteriological examination</u>	711
<u>of food or water samples, or similar services specified in rules</u>	712
<u>adopted under section 3717.05 of the Revised Code;</u>	713
	714
<u>(9) Funding for the component that includes revenues obtained</u>	715
<u>from license fees and penalty fees;</u>	716
<u>(10) Any known increases in costs or expenses for such items</u>	717
<u>as rent, utilities, equipment, and current personnel, as well as</u>	718
<u>the costs for additional personnel identified by the licensor</u>	719
<u>after the performance of a personnel needs analysis by the</u>	720
<u>director of health.</u>	721
<u>(C) The licensor shall calculate the license fee for each</u>	722
<u>food service operation category listed in rules adopted to</u>	723
<u>establish license fee categories pursuant to section 3717.04 of</u>	724
<u>the Revised Code, as follows:</u>	725

(1) The vending machine location category cost divided by the 726
number of vending machine location licenses issued; 727

(2) The mobile food service operation category cost divided 728
by the number of mobile food service operation licenses issued; 729

(3) For a temporary food service operation, either of the 730
following: 731

(a) Using fees established on a per event basis, the 732
temporary food service operation and temporary retail food 733
establishment category cost divided by the number of temporary 734
food service operation and temporary retail food establishment 735
licenses issued. If a licensor elects to establish a noncommercial 736
fee for temporary food service operations and temporary retail 737
food establishments, the category cost shall be divided by the 738
number of licenses issued for commercial temporary food service 739
operations and commercial temporary retail food establishments, 740
plus fifty per cent of the number of licenses issued for 741
noncommercial temporary food service operations and noncommercial 742
temporary retail food establishments. 743

(b) Using fees established on a per day basis, the temporary 744
food service operation and temporary retail food establishment 745
category cost divided by the total number of days for which 746
temporary licenses were issued. If a licensor elects to establish 747
a noncommercial fee for temporary food service operations and 748
temporary retail food establishments, the category cost shall be 749
divided by the number of days for which commercial licenses were 750
issued plus fifty per cent of the number of days for which 751
temporary licenses were issued for noncommercial temporary food 752
service operations and noncommercial temporary retail food 753
establishments. 754

(4) For food service operations classified as risk level I, 755
risk level II, risk level III, risk level IV, and risk level V 756

food service operations:

(a) Determine support costs in accordance with division
(B)(7) of this section. Equally allocate support costs
attributable to the risk level food service operations and retail
food establishments component by dividing the support costs of the
risk level food service operations and retail food establishments
component by the total number of risk level I, risk level II, risk
level III, risk level IV, and risk level V commercial food service
operations and retail food establishments plus fifty per cent of
noncommercial operations classified by risk.

(b) Determine the total number of food service operations and
retail food establishments in each risk level category. If the
licensor elects to establish noncommercial categories for risk
level food service operations and risk level retail food
establishments, the total number of food service operations and
retail food establishments in each risk level category equals the
number of commercial risk level food service operations and
commercial risk level retail food establishments plus fifty per
cent of the number of noncommercial risk level food service
operations and noncommercial risk level retail food
establishments.

(c) Determine the number of standard inspection periods for
each risk level category using the inspection time factor. The
inspection time factor equals the ratio of the average amount of
time per inspection for all risk levels relative to the average
time per inspection for the food service operations that are
classified as risk level I and have less than 10,000 square feet.
The inspection time factor for food service operations according
to risk level and square footage are as follows:

(i) Risk level I less than 10,000 square feet is 1.00; 10,000
square feet or above is 1.88.

(ii) Risk level II less than 10,000 square feet is 1.25; 788
10,000 square feet or above is 2.03. 789

(iii) Risk level III less than 10,000 square feet is 1.64; 790
10,000 square feet or above is 4.84. 791

(iv) Risk level IV less than 10,000 square feet is 2.21; 792
10,000 square feet or above is 5.16. 793

(v) Risk level V less than 10,000 square feet is 2.84; 10,000 794
square feet or above is 6.09. 795

The number of standard inspection periods equals the minimum 796
number of inspections required for each risk level category 797
multiplied by the inspection time factor, the product of which is 798
multiplied by the total number of food service operations and 799
retail food establishments in each risk level category. 800

(d) Determine the total number of standard inspection periods 801
by summing the standard inspection periods for all risk level 802
categories; 803

(e) Determine the nonsupport cost per standard inspection 804
period by subtracting the support cost from the total actual cost 805
of the component, and divide this amount by the total number of 806
standard inspection periods; 807

(f) Determine the nonsupport cost for each risk level 808
category by using the following formula: A x B x C = The 809
nonsupport cost for each risk level, where A equals the nonsupport 810
cost per standard inspection period, B equals the minimum number 811
of inspections for the risk level category, and C equals the 812
inspection time factor for the risk level category; 813

(g) Determine the maximum license fee that may be established 814
by adding the nonsupport cost for each risk level category to the 815
support cost per license issued. 816

(D) For purposes of determining costs, each licensor shall 817

calculate by using the statewide average number of establishments
inspected by sanitarians.

Sec. 3717.10. The director of health may request the auditor
of state to conduct an audit of a licensor, in addition to the
annual or biennial audit conducted pursuant to division (A) of
section 117.11 of the Revised Code, if the director has reasonable
cause to believe that an additional audit is in the public
interest.

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 licensor 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

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

(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 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 had its approval revoked 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 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.

(E) Notwithstanding sections 3717.07, 3717.25, and 3717.45 of
the Revised Code, if a board fails to appropriately respond to a
survey, as determined by the director who conducted the survey, or
fails to comply with information reporting requirements within the
time required, the board shall reduce the licensing fee
established for the licensing period that next ensues after
discovery of the failure by twenty per cent of the amount that
would have been established pursuant to sections 3717.07, 3717.25,
and 3717.45 of the Revised Code, but for the failure.

Sec. 3717.22. (A) The following are not retail food 911
establishments: 912

(1) A food service operation licensed under this chapter, 913
including a food service operation that provides the services of a 914
retail food establishment pursuant to an endorsement issued under 915
section 3717.44 of the Revised Code; 916

(2) An entity exempt under divisions (B)(1) to (9), (11), or 917
(12) of section 3717.42 of the Revised Code from the requirement 918
to be licensed as a food service operation and an entity exempt 919
under division (B)(10) of that section if the entity is regulated 920
by the department of agriculture as a ~~wholesale~~ food processing 921
establishment under section 3715.021 of the Revised Code; 922

(3) A business or that portion of a business that is 923
regulated by the federal government or the department of 924
agriculture as a food manufacturing or food processing ~~operation~~ 925
establishment, including an ~~operation~~ establishment or that 926
portion of an ~~operation~~ establishment regulated by the department 927
of agriculture under Chapter 911., 913., 915., 917., 918., or 925. 928
of the Revised Code. 929

(B) All of the following are exempt from the requirement to 930
be licensed as a retail food establishment: 931

(1) An ~~operation~~ establishment, other than a mobile retail 932
food establishment, with commercially prepackaged foods that are 933
not potentially hazardous and contained in displays, the total 934
space of which equals less than one hundred cubic feet; 935

(2) A ~~storage facility of less than five hundred square feet~~ 936
~~containing prepackaged foods that are not potentially hazardous;~~ 937
person at a farmers market that is registered with the director of 938
agriculture pursuant to section 3717.041 of the Revised Code that 939
offers for sale only the following: 940

<u>(a) Fresh unprocessed fruits or vegetables;</u>	941
<u>(b) Products of a cottage food production operation;</u>	942
<u>(c) Maple syrup, sorghum, or honey that is produced by a</u>	943
<u>maple syrup or sorghum producer or beekeeper described in division</u>	944
<u>(A)(1) of section 3715.021 of the Revised Code;</u>	945
<u>(d) Commercially prepackaged food that is not potentially</u>	946
<u>hazardous food, on the condition that the commercially prepackaged</u>	947
<u>nonpotentially hazardous food is contained in displays, the total</u>	948
<u>space of which equals less than one hundred cubic feet on the</u>	949
<u>premises where the person conducts business at the farmers market.</u>	950
<u>(3) A roadside market that <u>person who</u> offers only fresh</u>	951
<u>fruits and fresh vegetables that are unprocessed <u>for sale at a</u></u>	952
<u>roadside stand;</u>	953
<u>(4) A nonprofit organization exempt from federal income</u>	954
<u>taxation under section 501(c)(3) of the "Internal Revenue Code of</u>	955
<u>1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, that raises</u>	956
<u>funds by selling displayed foods, if the foods <u>that</u> are not</u>	957
<u>potentially hazardous and the display is made for not more than</u>	958
<u>seven consecutive days or more than fifty-two separate days during</u>	959
<u>a licensing period. This exemption extends to any individual or</u>	960
<u>group raising all of its funds during the display time periods</u>	961
<u>specified in division (B)(4) of this section for the benefit of</u>	962
<u>the nonprofit organization by selling displayed foods under the</u>	963
<u>same conditions.</u>	964
<u>(5) <u>An establishment that offers food contained in displays</u></u>	965
<u><u>of less than five hundred square feet, and that is classified as</u></u>	966
<u><u>risk level one pursuant to rules establishing licensing categories</u></u>	967
<u><u>for retail food establishments adopted under section 3717.33 of</u></u>	968
<u><u>the Revised Code, on the condition that the establishment offers</u></u>	969
<u><u>food for sale at retail not more than six months in each calendar</u></u>	970
<u><u>year;</u></u>	971

- (6) A cottage food production operation, on the condition 972
that the operation offers its products directly to the consumer 973
from the site where the products are produced; 974
- (7) A maple syrup and sorghum processor and beekeeper 975
described in division (A)(1) of section 3715.021 of the Revised 976
Code, on the condition that the processor or beekeeper offers only 977
maple syrup, sorghum, or honey directly to the consumer from the 978
site where those products are processed; 979
- (8) Any person who annually maintains five hundred or fewer 980
birds, on the condition that the person offers the eggs from those 981
birds directly to the consumer from the location where the eggs 982
are produced; 983
- (9) Any person who annually raises and slaughters one 984
thousand or fewer chickens, on the condition that the person 985
offers dressed chickens directly to the consumer from the location 986
where the chickens are raised and slaughtered; 987
- (10) Any person who raises, slaughters, and processes the 988
meat of nonamenable species described in divisions (A) and (B) of 989
section 918.12 of the Revised Code, on the condition that the 990
person offers the meat directly to the consumer from the location 991
where the meat is processed; 992
- (11) A farm product auction, on the condition that it is 993
registered with the director pursuant to rules adopted under 994
section 3717.041 of the Revised Code and that only the products 995
described in divisions (B)(8) to (10) of this section that are 996
produced, raised, slaughtered, or processed, as appropriate, by 997
persons described in divisions (B)(8) to (10) of this section are 998
offered for sale at the farm product auction; 999
- (12) A farm product auction, on the condition that it is 1000
registered with the director pursuant to rules adopted under 1001
section 3717.041 of the Revised Code and that only the following 1002

<u>foods are offered for sale at the farm product auction:</u>	1003
<u>(a) Products of a cottage food production operation;</u>	1004
<u>(b) Maple syrup, sorghum, or honey that is produced by a</u>	1005
<u>maple syrup or sorghum producer or beekeeper described in division</u>	1006
<u>(A)(1) of section 3715.021 of the Revised Code.</u>	1007
<u>(13) Operations that, with respect to offering food for sale,</u>	1008
<u>offer only prepackaged alcoholic beverages or prepackaged</u>	1009
<u>nonpotentially hazardous beverages;</u>	1010
<u>(14) Operations that, with respect to offering food for sale,</u>	1011
<u>offer only prepackaged alcoholic beverages, prepackaged</u>	1012
<u>nonpotentially hazardous beverages, or commercially prepackaged</u>	1013
<u>food that is not potentially hazardous food, on the condition that</u>	1014
<u>the commercially prepackaged nonpotentially hazardous food is</u>	1015
<u>contained in displays, the total space of which equals less than</u>	1016
<u>three hundred cubic feet on the premises of the operation;</u>	1017
<u>(15) A person who offers for sale only the following foods at</u>	1018
<u>a festival or celebration, on the condition that the festival or</u>	1019
<u>celebration is organized by a political subdivision of the state</u>	1020
<u>and lasts for a period not longer than seven consecutive days:</u>	1021
	1022
<u>(a) Fresh unprocessed fruits or vegetables;</u>	1023
<u>(b) Products of a cottage food production operation;</u>	1024
<u>(c) Maple syrup, sorghum, or honey if produced by a maple</u>	1025
<u>syrup or sorghum processor or beekeeper as described in division</u>	1026
<u>(A)(1) of section 3715.021 of the Revised Code;</u>	1027
<u>(d) Commercially prepackaged food that is not potentially</u>	1028
<u>hazardous food, on the condition that the commercially prepackaged</u>	1029
<u>nonpotentially hazardous food is contained in displays, the total</u>	1030
<u>space of which equals less than one hundred cubic feet on the</u>	1031
<u>premises where the person conducts business at the farmers market.</u>	1032

(16) A farm market on the condition that it is registered 1033
with the director pursuant to rules adopted under section 3717.041 1034
of the Revised Code and that only the following foods are offered 1035
for sale at the farm market: 1036

(a) Fresh unprocessed fruits or vegetables; 1037

(b) Products of a cottage food production operation; 1038

(c) Maple syrup, sorghum, or honey that is produced by a 1039
maple syrup or sorghum producer or beekeeper described in division 1040
(A)(1) of section 3715.021 of the Revised Code; 1041

(d) Commercially prepackaged food that is not potentially 1042
hazardous food, on the condition that the commercially prepackaged 1043
nonpotentially hazardous food is contained in displays, the total 1044
space of which equals less than one hundred cubic feet on the 1045
premises where the person conducts business at the farm market; 1046

(e) Cider and other juices manufactured on site at the farm 1047
market; 1048

(f) The products or items described in divisions (B)(8) to 1049
(10) of this section, on the condition that those products or 1050
items were produced by the person offering to sell them, and 1051
further conditioned that, with respect to eggs offered, the person 1052
offering to sell them annually maintains five hundred or fewer 1053
birds, and with respect to dressed chickens offered, the person 1054
annually raises and slaughters one thousand or fewer chickens. 1055

Sec. 3717.25. (A) A licensor may charge fees for issuing and 1056
renewing retail food establishment licenses. Any licensing fee 1057
charged shall be used solely for ~~the administration and~~ 1058
~~enforcement of the provisions of this chapter and the rules~~ 1059
~~adopted under it applicable to inspecting~~ retail food 1060
establishments. 1061

Any licensing fee charged under this section shall be based 1062

on the licensor's costs of ~~regulating~~ inspecting 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.

Notwithstanding sections 3717.07, 3717.25, and 3717.45 of the
Revised Code, if the auditor of state, after conducting an audit,
determines that a licensor has charged or is charging a licensing
fee that exceeds the amount that should have been established
based on the uniform methodologies established under section
3717.07 of the Revised Code, the licensor shall reduce the fee it
establishes for the licensing period that next ensues after the
auditor's determination by an amount that is proportional to the
overage.

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

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

(2) Any necessary collection and bacteriological examination 1095
of samples from retail food establishments or similar services 1096
specified in rules adopted under this chapter by the director of 1097
agriculture; 1098

(3) Attendance at a course of study offered by the licensor 1099
in food protection as it pertains to retail food establishments, 1100
if the course is approved under section 3717.09 of the Revised 1101
Code. 1102

(C) The director may determine by rule an amount to be 1103
collected from applicants for retail food establishment licenses 1104
for use by the director in administering and enforcing the 1105
provisions of this chapter and the rules adopted under it 1106
applicable to retail food establishments. Licensors shall collect 1107
the amount prior to issuing an applicant's new or renewed license. 1108
If a licensing fee is charged under this section, the licensor 1109
shall collect the amount at the same time the fee is collected. 1110
Licensors are not required to provide notice or hold public 1111
hearings regarding amounts collected under this division. 1112

Not later than sixty days after the last day of the month in 1113
which a license is issued, the licensor shall certify the amount 1114
collected under this division and transmit the amount to the 1115
treasurer of state. All amounts received shall be deposited into 1116
the food safety fund created in section 915.24 of the Revised 1117
Code. The director shall use the amounts solely for the 1118
administration and enforcement of the provisions of this chapter 1119
and the rules adopted under it applicable to retail food 1120
establishments. 1121

When adopting rules regarding the amounts collected under 1122
this division, the director shall make available during the rule 1123
making process the current and projected expenses of administering 1124
and enforcing the provisions of this chapter and the rules adopted 1125
under it applicable to retail food establishments and the total of 1126

all amounts that have been deposited in the food safety fund 1127
pursuant to this division. 1128

Sec. 3717.42. (A) The following are not food service 1129
operations: 1130

(1) A retail food establishment licensed under this chapter, 1131
including a retail food establishment that provides the services 1132
of a food service operation pursuant to an endorsement issued 1133
under section 3717.44 of the Revised Code; 1134

(2) An entity exempt from the requirement to be licensed as a 1135
retail food establishment under division (B) of section 3717.22 of 1136
the Revised Code; 1137

(3) A business or that portion of a business that is 1138
regulated by the federal government or the department of 1139
agriculture as a food manufacturing or food processing operation, 1140
including an operation or that portion of an operation regulated 1141
by the department of agriculture under Chapter 911., 913., 915., 1142
917., 918., or 925. of the Revised Code. 1143

(B) All of the following are exempt from the requirement to 1144
be licensed as a food service operation: 1145

(1) A private home in which individuals related by blood, 1146
marriage, or law reside and in which the food that is prepared or 1147
served is intended only for those individuals and their nonpaying 1148
guests; 1149

(2) A private home operated as a bed-and-breakfast that 1150
prepares and offers food to guests, if the home is owner-occupied, 1151
the number of available guest bedrooms does not exceed six, 1152
breakfast is the only meal offered, and the number of guests 1153
served does not exceed sixteen; 1154

(3) A stand operated on the premises of a private home by one 1155
or more children under the age of twelve, if the food served is 1156

not potentially hazardous; 1157

(4) A residential facility that accommodates not more than 1158
sixteen residents; is licensed, certified, registered, or 1159
otherwise regulated by the federal government or by the state or a 1160
political subdivision of the state; and prepares food for or 1161
serves food to only the residents of the facility, the staff of 1162
the facility, and any nonpaying guests of residents or staff; 1163

(5) A church, school, fraternal or veterans' organization, 1164
volunteer fire organization, or volunteer emergency medical 1165
service organization preparing or serving food intended for 1166
individual portion service on its premises for not more than seven 1167
consecutive days or not more than fifty-two separate days during a 1168
licensing period. This exemption extends to any individual or 1169
group raising all of its funds during the time periods specified 1170
in division (B)(5) of this section for the benefit of the church, 1171
school, or organization by preparing or serving food intended for 1172
individual portion service under the same conditions. 1173

(6) A common carrier that prepares or serves food, if the 1174
carrier is regulated by the federal government; 1175

(7) A food service operation serving five or fewer 1176
individuals daily; 1177

(8) A type A or type B family day-care home, as defined in 1178
section 5104.01 of the Revised Code, that prepares or serves food 1179
for the children receiving day-care; 1180

(9) A vending machine location where the only foods dispensed 1181
are foods from one or both of the following categories: 1182

(a) Prepackaged foods that are not potentially hazardous; 1183

(b) Nuts, panned or wrapped bulk chewing gum, or panned or 1184
wrapped bulk candies. 1185

(10) A place servicing the vending machines at a vending 1186

machine location described in division (B)(9) of this section; 1187

(11) A commissary servicing vending machines that dispense 1188
only milk, milk products, or frozen desserts that are under a 1189
state or federal inspection and analysis program; 1190

(12) A "controlled location vending machine location," which 1191
means a vending machine location at which all of the following 1192
apply: 1193

(a) The vending machines dispense only foods that are not 1194
potentially hazardous; 1195

(b) The machines are designed to be filled and maintained in 1196
a sanitary manner by untrained persons; 1197

(c) Minimal protection is necessary to ensure against 1198
contamination of food and equipment. 1199

(13) A private home that prepares and offers food to guests, 1200
if the home is owner-occupied, meals are served on the premises of 1201
that home, and the number of meals served does not exceed one 1202
hundred fifteen per week. 1203

Sec. 3717.45. (A) A licensor may charge fees for issuing and 1204
renewing food service operation licenses. Any licensing fee 1205
charged shall be used solely for ~~the administration and~~ 1206
~~enforcement of the provisions of this chapter and the rules~~ 1207
~~adopted under it applicable to~~ inspecting food service operations. 1208

Any licensing fee charged under this section shall be based 1209
on the licensor's costs of ~~regulating~~ inspecting food service 1210
operations, as determined according to the uniform methodologies 1211
established under section 3717.07 of the Revised Code. If the 1212
licensor is a board of health, a fee may be disapproved by the 1213
district advisory council in the case of a general health district 1214
or the legislative authority of the city in the case of a city 1215
health district. A disapproved fee shall not be charged by the 1216

board of health. 1217

At least thirty days prior to establishing a licensing fee, 1218
the licensor shall hold a public hearing regarding the proposed 1219
fee. At least thirty days prior to the public hearing, the 1220
licensor shall give written notice of the hearing to each person 1221
or government entity holding a food service operation license that 1222
may be affected by the proposed fee. The notice shall be mailed to 1223
the last known address of the licensee and shall specify the date, 1224
time, and place of the hearing and the amount of the proposed fee. 1225
On request, the licensor shall provide the completed uniform 1226
methodology used in the calculation of the licensor's costs and 1227
the proposed fee. 1228

Notwithstanding sections 3717.07, 3717.25, and 3717.45 of the 1229
Revised Code, if the auditor of state, after conducting an audit, 1230
determines that a licensor has charged or is charging a licensing 1231
fee that exceeds the amount that should have been established 1232
based on the uniform methodologies established under section 1233
3717.07 of the Revised Code, the licensor shall reduce the fee it 1234
establishes for the licensing period that next ensues after the 1235
auditor's determination by an amount that is proportional to the 1236
overage. 1237

(B) In addition to licensing fees, a licensor may charge fees 1238
for the following: 1239

(1) Review of facility layout and equipment specifications 1240
pertaining to food service operations, other than mobile and 1241
temporary food service operations, or similar reviews conducted 1242
for vending machine locations; 1243

(2) Any necessary collection and bacteriological examination 1244
of samples from food service operations, or similar services 1245
specified in rules adopted under this chapter by the public health 1246
council; 1247

(3) Attendance at a course of study offered by the licensor 1248
in food protection as it pertains to food service operations, if 1249
the course is approved under section 3717.09 of the Revised Code. 1250

(C) The public health council may determine by rule an amount 1251
to be collected from applicants for food service operation 1252
licenses for use by the director of health in administering and 1253
enforcing the provisions of this chapter and the rules adopted 1254
under it applicable to food service operations. Licensors shall 1255
collect the amount prior to issuing an applicant's new or renewed 1256
license. If a licensing fee is charged under this section, the 1257
licensor shall collect the amount at the same time the fee is 1258
collected. Licensors are not required to provide notice or hold 1259
public hearings regarding amounts collected under this division. 1260

Not later than sixty days after the last day of the month in 1261
which a license is issued, the licensor shall certify the amount 1262
collected under this division and transmit the amount to the 1263
treasurer of state. All amounts received shall be deposited into 1264
the general operations fund created in section 3701.83 of the 1265
Revised Code. The director shall use the amounts solely for the 1266
administration and enforcement of the provisions of this chapter 1267
and the rules adopted under it applicable to food service 1268
operations. 1269

The director may submit recommendations to the public health 1270
council regarding the amounts collected under this division. When 1271
making recommendations, the director shall submit a report stating 1272
the current and projected expenses of administering and enforcing 1273
the provisions of this chapter and the rules adopted under it 1274
applicable to food service operations and the total of all amounts 1275
that have been deposited in the general operations fund pursuant 1276
to this division. The director may include in the report any 1277
recommendations for modifying the department's administration and 1278
enforcement of the provisions of this chapter and the rules 1279

adopted under it applicable to food service operations.

1280

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.

1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297

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.

1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310

Sec. 4303.13. Permit D-1 may be issued to the owner or 1311
operator of a hotel or ~~restaurant~~ of a retail food establishment 1312
or a food service operation licensed pursuant to ~~section 3717.43~~ 1313
Chapter 3717. of the Revised Code that operates as a restaurant 1314
for purposes of this chapter, or of a club, amusement park, 1315
drugstore, lunch stand, boat, or vessel, and shall be issued to a 1316
person described in division (B) of this section, to sell beer at 1317
retail either in glass or container, for consumption on the 1318
premises where sold; and, except as otherwise provided in division 1319
(B) of this section, to sell beer at retail in other receptacles 1320
or in original containers having a capacity of not more than five 1321
and one-sixth gallons not for consumption on the premises where 1322
sold. The fee for this permit is one hundred eighty-eight dollars 1323
for each location, boat, or vessel. 1324

Sec. 4303.14. Permit D-2 may be issued to the owner or 1325
operator of a hotel or ~~restaurant~~ of a retail food establishment 1326
or a food service operation licensed pursuant to ~~section 3717.43~~ 1327
Chapter 3717. of the Revised Code that operates as a restaurant 1328
for purposes of this chapter, or of a club, boat, or vessel, to 1329
sell wine and prepared and bottled cocktails, cordials, and other 1330
mixed beverages manufactured and distributed by holders of A-4 and 1331
B-4 permits at retail, either in glass or container, for 1332
consumption on the premises where sold. The holder of such permit 1333
may also sell wine and prepared and bottled cocktails, cordials, 1334
and other mixed beverages in original packages and not for 1335
consumption on the premises where sold or for resale. The fee for 1336
this permit is two hundred eighty-two dollars for each location, 1337
boat, or vessel. 1338

Sec. 4303.15. Permit D-3 may be issued to the owner or 1339
operator of a hotel or ~~restaurant~~ of a retail food establishment 1340

or a food service operation licensed pursuant to ~~section 3717.43~~ 1341
Chapter 3717. of the Revised Code ~~that operates as a restaurant~~ 1342
~~for purposes of this chapter~~, or ~~of~~ a club, boat, or vessel, to 1343
sell spirituous liquor at retail, only by the individual drink in 1344
glass or from the container, for consumption on the premises where 1345
sold. No sales of intoxicating liquor shall be made by a holder of 1346
a D-3 permit after one a.m. The fee for this permit is six hundred 1347
dollars for each location, boat, or vessel. 1348

Sec. 4303.18. Permit D-5 may be issued to the owner or 1349
operator of a retail food establishment or a food service 1350
operation licensed pursuant to Chapter 3717. of the Revised Code 1351
that operates as a restaurant or night club ~~for purposes of this~~ 1352
~~chapter~~, to sell beer and any intoxicating liquor at retail, only 1353
by the individual drink in glass and from the container, for 1354
consumption on the premises where sold, and to sell the same 1355
products in the same manner and amounts not for consumption on the 1356
premises as may be sold by holders of D-1 and D-2 permits. A 1357
person who is the holder of both a D-3 and D-3a permit need not 1358
obtain a D-5 permit. The fee for this permit is one thousand eight 1359
hundred seventy-five dollars. 1360

Sec. 4303.181. (A) Permit D-5a may be issued either to the 1361
owner or operator of a hotel or motel that is required to be 1362
licensed under section 3731.03 of the Revised Code, that contains 1363
at least fifty rooms for registered transient guests, and that 1364
qualifies under the other requirements of this section, or to the 1365
owner or operator of a restaurant specified under this section, to 1366
sell beer and any intoxicating liquor at retail, only by the 1367
individual drink in glass and from the container, for consumption 1368
on the premises where sold, and to registered guests in their 1369
rooms, which may be sold by means of a controlled access alcohol 1370
and beverage cabinet in accordance with division (B) of section 1371

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 dollars.

(B) Permit D-5b may be issued to the owner, operator, tenant, lessee, or occupant of an enclosed shopping center to sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold; and to sell the same products in the same manner and amount not for consumption on the premises as may be sold by

holders of D-1 and D-2 permits. In addition to the privileges
authorized in this 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 1468
privileges as the holder of a D-5 permit. 1469

To qualify for a D-5c permit, the owner or operator of a 1470
~~restaurant that is~~ retail food establishment or a food service 1471
operation licensed pursuant to ~~section 3717.43~~ Chapter 3717. of 1472
the Revised Code that operates as a restaurant for purposes of 1473
this chapter, shall have operated the restaurant at the proposed 1474
premises for not less than twenty-four consecutive months 1475
immediately preceding the filing of the application for the 1476
permit, have applied for a D-5 permit no later than December 31, 1477
1988, and appear on the division's quota waiting list for not less 1478
than six months immediately preceding the filing of the 1479
application for the permit. In addition to these requirements, the 1480
proposed D-5c permit premises shall be located within a municipal 1481
corporation and further within an election precinct that, at the 1482
time of the application, has no more than twenty-five per cent of 1483
its total land area zoned for residential use. 1484

A D-5c permit shall not be transferred to another location. 1486
No quota restriction shall be placed on the number of such permits 1487
that may be issued. 1488

Any person who has held a D-5c permit for at least two years 1489
may apply for a D-5 permit, and the division of liquor control 1490
shall issue the D-5 permit notwithstanding the quota restrictions 1491
contained in section 4303.29 of the Revised Code or in any rule of 1492
the liquor control commission. 1493

The fee for this permit is one thousand two hundred fifty 1494
dollars. 1495

(D) Permit D-5d may be issued to ~~either~~ the owner or operator 1496
of a ~~restaurant that is~~ retail food establishment or a food 1497
service operation licensed pursuant to ~~section 3717.43~~ Chapter 1498
3717. of the Revised Code that operates as a restaurant for 1499

purposes of this chapter and that is located at an airport 1500
operated by a board of county commissioners pursuant to section 1501
307.20 of the Revised Code or at an airport operated by a regional 1502
airport authority pursuant to Chapter 308. of the Revised Code. 1503
Not more than one D-5d permit shall be issued in each county. The 1504
holder of a D-5d permit may sell beer and any intoxicating liquor 1505
at retail, only by the individual drink in glass and from the 1506
container, for consumption on the premises where sold, and may 1507
sell the same products in the same manner and amounts not for 1508
consumption on the premises where sold as may be sold by the 1509
holders of D-1 and D-2 permits. In addition to the privileges 1510
authorized in this division, the holder of a D-5d permit may 1511
exercise the same privileges as the holder of a D-5 permit. 1512

A D-5d permit shall not be transferred to another location. 1513
Except as otherwise provided in this division, no quota 1514
restrictions shall be placed on the number of such permits that 1515
may be issued. 1516

The fee for this permit is one thousand eight hundred 1517
seventy-five dollars. 1518

(E) Permit D-5e may be issued to any nonprofit organization 1519
that is exempt from federal income taxation under the "Internal 1520
Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 501(c)(3), as 1521
amended, or that is a charitable organization under any chapter of 1522
the Revised Code, and that owns or operates a riverboat that meets 1523
all of the following: 1524

(1) Is permanently docked at one location; 1525

(2) Is designated as an historical riverboat by the Ohio 1526
historical society; 1527

(3) Contains not less than fifteen hundred square feet of 1528
floor area; 1529

(4) Has a seating capacity of fifty or more persons. 1530

The holder of a D-5e permit may sell beer and intoxicating 1531
liquor at retail, only by the individual drink in glass and from 1532
the container, for consumption on the premises where sold. 1533

A D-5e permit shall not be transferred to another location. 1534
No quota restriction shall be placed on the number of such permits 1535
that may be issued. The population quota restrictions contained in 1536
section 4303.29 of the Revised Code or in any rule of the liquor 1537
control commission shall not apply to this division, and the 1538
division shall issue a D-5e permit to any applicant who meets the 1539
requirements of this division. However, the division shall not 1540
issue a D-5e permit if the permit premises or proposed permit 1541
premises are located within an area in which the sale of 1542
spirituous liquor by the glass is prohibited. 1543

The fee for this permit is nine hundred seventy-five dollars. 1544

(F) Permit D-5f may be issued to ~~either~~ the owner or the 1545
operator of a retail food establishment or a food service 1546
operation ~~that is~~ licensed under ~~section 3717.43~~ Chapter 3717. of 1547
the Revised Code that operates as a restaurant for purposes of 1548
this chapter and that meets all of the following: 1549

(1) It contains not less than twenty-five hundred square feet 1550
of floor area. 1551

(2) It is located on or in, or immediately adjacent to, the 1552
shoreline of, a navigable river. 1553

(3) It provides docking space for twenty-five boats. 1554

(4) It provides entertainment and recreation, provided that 1555
not less than fifty per cent of the business on the permit 1556
premises shall be preparing and serving meals for a consideration. 1557

In addition, each application for a D-5f permit shall be 1558
accompanied by a certification from the local legislative 1559
authority that the issuance of the D-5f permit is not inconsistent 1560

with that political subdivision's comprehensive development plan 1561
or other economic development goal as officially established by 1562
the local legislative authority. 1563

The holder of a D-5f permit may sell beer and intoxicating 1564
liquor at retail, only by the individual drink in glass and from 1565
the container, for consumption on the premises where sold. 1566

A D-5f permit shall not be transferred to another location. 1567
No more than fifteen D-5f permits shall be issued by the division 1568
of liquor control, and no more than two such permits shall be 1569
issued in any county. However, the division shall not issue a D-5f 1570
permit if the permit premises or proposed permit premises are 1571
located within an area in which the sale of spirituous liquor by 1572
the glass is prohibited. 1573

A fee for this permit is one thousand eight hundred 1574
seventy-five dollars. 1575

As used in this division, "navigable river" means a river 1576
that is also a "navigable water" as defined in the "Federal Power 1577
Act," 94 Stat. 770 (1980), 16 U.S.C. 796. 1578

(G) Permit D-5g may be issued to a nonprofit corporation that 1579
is either the owner or the operator of a national professional 1580
sports museum. The holder of a D-5g permit may sell beer and any 1581
intoxicating liquor at retail, only by the individual drink in 1582
glass and from the container, for consumption on the premises 1583
where sold. The holder of a D-5g permit shall sell no beer or 1584
intoxicating liquor for consumption on the premises where sold 1585
after one a.m. A D-5g permit shall not be transferred to another 1586
location. No quota restrictions shall be placed on the number of 1587
D-5g permits that may be issued. The fee for this permit is one 1588
thousand five hundred dollars. 1589

(H) Permit D-5h may be issued to any nonprofit organization 1590
that is exempt from federal income taxation under the "Internal 1591

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. 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 1622
division (I)(5) of this section. The results of the independent 1623
audit shall be transmitted to the division. Upon determining that 1624
the receipts of the holder from beer and liquor sales exceeded 1625
twenty-five per cent of its total gross receipts, the division 1626
shall suspend the permit of the permit holder under section 1627
4301.25 of the Revised Code and may allow the permit holder to 1628
elect a forfeiture under section 4301.252 of the Revised Code. 1629

The holder of a D-5i permit may sell beer and any 1630
intoxicating liquor at retail, only by the individual drink in 1631
glass and from the container, for consumption on the premises 1632
where sold, and may sell the same products in the same manner and 1633
amounts not for consumption on the premises where sold as may be 1634
sold by the holders of D-1 and D-2 permits. The holder of a D-5i 1635
permit shall sell no beer or intoxicating liquor for consumption 1636
on the premises where sold after two-thirty a.m. In addition to 1637
the privileges authorized in this division, the holder of a D-5i 1638
permit may exercise the same privileges as the holder of a D-5 1639
permit. 1640

A D-5i permit shall not be transferred to another location. 1641
The division of liquor control shall not renew a D-5i permit 1642
unless the food service operation for which it is issued continues 1643
to meet the requirements described in divisions (I)(1) to (6) of 1644
this section. No quota restrictions shall be placed on the number 1645
of D-5i permits that may be issued. The fee for this permit is one 1646
thousand eight hundred seventy-five dollars. 1647

(J)(1) Permit D-5j may be issued to ~~either~~ the owner or the 1648
operator of a retail food establishment or a food service 1649
operation ~~that is~~ licensed under ~~section 3717.43~~ Chapter 3717. of 1650
the Revised Code to sell beer and intoxicating liquor at retail, 1651
only by the individual drink in glass and from the container, for 1652
consumption on the premises where sold and to sell beer and 1653

intoxicating liquor in the same manner and amounts not for 1654
consumption on the premises where sold as may be sold by the 1655
holders of D-1 and D-2 permits. The holder of a D-5j permit may 1656
exercise the same privileges, and shall observe the same hours of 1657
operation, as the holder of a D-5 permit. 1658

(2) The D-5j permit shall be issued only within a community 1659
entertainment district that is designated under section 4301.80 of 1660
the Revised Code and that is located in a municipal corporation 1661
with a population of at least one hundred thousand. 1662

(3) The location of a D-5j permit may be transferred only 1663
within the geographic boundaries of the community entertainment 1664
district in which it was issued and shall not be transferred 1665
outside the geographic boundaries of that district. 1666

(4) Not more than one D-5j permit shall be issued within each 1667
community entertainment district for each five acres of land 1668
located within the district. Not more than fifteen D-5j permits 1669
may be issued within a single community entertainment district. 1670
Except as otherwise provided in division (J)(4) of this section, 1671
no quota restrictions shall be placed upon the number of D-5j 1672
permits that may be issued. 1673

(5) The fee for a D-5j permit is one thousand eight hundred 1674
seventy-five dollars. 1675

Sec. 4303.182. (A) Except as otherwise provided in divisions 1676
(B) to (F) of this section, permit D-6 shall be issued to the 1677
holder of an A-1-A, A-2, C-2, D-2, D-3, D-4, D-4a, D-5, D-5a, 1678
D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-5j, or D-7 1679
permit to allow sale under that permit between the hours of ten 1680
a.m. and midnight, or between the hours of one p.m. and midnight, 1681
on Sunday, as applicable, if that sale has been authorized under 1682
section 4301.361, 4301.364, 4301.365, or 4301.366 of the Revised 1683
Code and under the restrictions of that authorization. 1684

(B) Permit D-6 shall be issued to the holder of any permit, 1685
including a D-4a and D-5d permit, authorizing the sale of 1686
intoxicating liquor issued for a premises located at any publicly 1687
owned airport, as defined in section 4563.01 of the Revised Code, 1688
at which commercial airline companies operate regularly scheduled 1689
flights on which space is available to the public, to allow sale 1690
under such permit between the hours of ten a.m. and midnight on 1691
Sunday, whether or not that sale has been authorized under section 1692
4301.361, 4301.364, 4301.365, or, 4301.366 of the Revised Code. 1693

(C) Permit D-6 shall be issued to the holder of a D-5a 1694
permit, and to the holder of a D-3 or D-3a permit who is the owner 1695
or operator of a hotel or motel that is required to be licensed 1696
under section 3731.03 of the Revised Code, that contains at least 1697
fifty rooms for registered transient guests, and that has on its 1698
premises a ~~restaurant~~ retail food establishment or a food service 1699
operation licensed pursuant to ~~section 3717.43~~ Chapter 3717. of 1700
the Revised Code that operates as a restaurant for purposes of 1701
this chapter and is affiliated with the hotel or motel and within 1702
or contiguous to the hotel or motel and serving food within the 1703
hotel or motel, to allow sale under such permit between the hours 1704
of ten a.m. and midnight on Sunday, whether or not that sale has 1705
been authorized under section 4301.361, 4301.364, 4301.365, or, 1706
4301.366 of the Revised Code. 1707

(D) The holder of a D-6 permit that is issued to a sports 1708
facility may make sales under the permit between the hours of 1709
eleven a.m. and midnight on any Sunday on which a professional 1710
baseball, basketball, football, hockey, or soccer game is being 1711
played at the sports facility. As used in this division, "sports 1712
facility" means a stadium or arena that has a seating capacity of 1713
at least four thousand and that is owned or leased by a 1714
professional baseball, basketball, football, hockey, or soccer 1715
franchise or any combination of those franchises. 1716

(E) Permit D-6 shall be issued to the holder of any permit 1717
that authorizes the sale of beer or intoxicating liquor and that 1718
is issued to a premises located in or at the Ohio historical 1719
society area or the state fairgrounds, as defined in division (B) 1720
of section 4301.40 of the Revised Code, to allow sale under that 1721
permit between the hours of ten a.m. and midnight on Sunday, 1722
whether or not that sale has been authorized under section 1723
4301.361, 4301.364, 4301.365, or 4301.366 of the Revised Code. 1724

(F) Permit D-6 shall be issued to the holder of any permit 1725
that authorizes the sale of intoxicating liquor and that is issued 1726
to an outdoor performing arts center to allow sale under that 1727
permit between the hours of one p.m. and midnight on Sunday, 1728
whether or not that sale has been authorized under section 1729
4301.361 of the Revised Code. A D-6 permit issued under this 1730
division is subject to the results of an election, held after the 1731
D-6 permit is issued, on question (B)(4) as set forth in section 1732
4301.351 of the Revised Code. Following the end of the period 1733
during which an election may be held on question (B)(4) as set 1734
forth in that section, sales of intoxicating liquor may continue 1735
at an outdoor performing arts center under a D-6 permit issued 1736
under this division, unless an election on that question is held 1737
during the permitted period and a majority of the voters voting in 1738
the precinct on that question vote "no." 1739

As used in this division, "outdoor performing arts center" 1740
means an outdoor performing arts center that is located on not 1741
less than eight hundred acres of land and that is open for 1742
performances from the first day of April to the last day of 1743
October of each year. 1744

(G) If the restriction to licensed premises where the sale of 1745
food and other goods and services exceeds fifty per cent of the 1746
total gross receipts of the permit holder at the premises is 1747
applicable, the division of liquor control may accept an affidavit 1748

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 3709.03, 3709.05, 3709.07,
3715.01, 3715.021, 3717.01, 3717.05, 3717.11, 3717.22, 3717.25,
3717.42, 3717.45, 4303.021, 4303.13, 4303.14, 4303.15, 4303.18,
4303.181, 4303.182, and 4303.183 and section 3717.07 of the
Revised Code are hereby repealed.

Section 3. If a board of health does not have at least one 1810
member who is an individual who holds a current license to operate 1811
a food service operation under Chapter 3717. of the Revised Code 1812
on the effective date of this act, the appropriate appointing 1813
authority shall, upon the expiration of the term of office or upon 1814
filling a vacancy that occurs first after the effective date of 1815
this act, appoint an individual who holds that type of license to 1816
the board, and before that appointment, notwithstanding sections 1817
3709.03, 3709.05, and 3709.07 of the Revised Code as amended by 1818
this act, the board need not have a member who holds that type of 1819
license. 1820

Section 4. Licenses issued pursuant to Chapter 3717. of the 1821
Revised Code before the effective date of this act that were due 1822
to expire on February 28, 2002, instead remain valid until May 31, 1823
2002. 1824

Section 5. Section 3709.05 of the Revised Code is presented 1825
in this act as a composite of the section as amended by both Am. 1826
Sub. H.B. 117 and Am. Sub. H.B. 355 of the 121st General Assembly. 1827
The General Assembly, applying the principle stated in division 1828
(B) of section 1.52 of the Revised Code that amendments are to be 1829
harmonized if reasonably capable of simultaneous operation, finds 1830
that the composite is the resulting version of the section in 1831
effect prior to the effective date of the section as presented in 1832
this act. 1833

Section 6. This act is hereby declared to be an emergency 1834
measure necessary for the immediate preservation of the public 1835
peace, health, and safety. The reason for such necessity is that 1836
licensure requirements are posing an undue economic burden upon 1837
small retail food establishments, threatening the livelihood of 1838
those employers and their employees. Therefore, this act shall go 1839

into immediate effect.

1840