

# As Passed by the House

124th General Assembly

Regular Session

2001-2002

Am. Sub. S. B. No. 136

SENATORS Wachtmann, Ryan, Hagan, Nein, Blessing, Amstutz, DiDonato,

Robert Gardner, Mumper, White

REPRESENTATIVES Schaffer, Collier, Williams, Grendell, Faber, Cates,

Carey, Webster, Reinhard, Callender, Hagan, Flowers, Hartnett, Schmidt,

Coates, Jolivette, Aslanides, Gilb, Manning, Latell, Hoops, Evans, Roman,

Young, Calvert, Seitz

---

## A B I L L

To amend sections 3709.02, 3709.03, 3709.05, 3709.07, 1  
3715.01, 3715.021, 3715.59, 3715.60, 3717.01, 2  
3717.03, 3717.05, 3717.07, 3717.11, 3717.22, 3  
3717.23, 3717.25, 3717.27, 3717.29, 3717.42, 4  
3717.43, 4303.021, 4303.13, 4303.14, 4303.15, 5  
4303.18, 4303.181, 4303.182, and 4303.183 and to 6  
enact sections 3709.41, 3715.022, 3715.023, 7  
3715.024, 3715.025, 3717.041, 3717.071, 3717.111, 8  
and 3717.221 of the Revised Code to modify the laws 9  
pertaining to the administration and enforcement of 10  
food safety programs, to require each board of 11  
health to have a member who represents the 12  
activities licensed by boards of health, and to 13  
declare an emergency. 14

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

**Section 1.** That sections 3709.02, 3709.03, 3709.05, 3709.07, 15  
3715.01, 3715.021, 3715.59, 3715.60, 3717.01, 3717.03, 3717.05, 16

3717.07, 3717.11, 3717.22, 3717.23, 3717.25, 3717.27, 3717.29, 17  
3717.42, 3717.43, 4303.021, 4303.13, 4303.14, 4303.15, 4303.18, 18  
4303.181, 4303.182, and 4303.183 be amended and sections 3709.41, 19  
3715.022, 3715.023, 3715.024, 3715.025, 3717.041, 3717.071, 20  
3717.111, and 3717.221 of the Revised Code be enacted to read as 21  
follows: 22

**Sec. 3709.02.** (A) In each general health district there shall 23  
be a board of health consisting of five members to be appointed as 24  
provided in ~~section~~ sections 3709.03 and 3709.41 of the Revised 25  
Code. The term of office of the members shall be five years from 26  
the date of appointment, except that of those first appointed one 27  
shall serve for five years, one for four years, one for three 28  
years, one for two years, and one for one year, and thereafter one 29  
shall be appointed each year. This paragraph does not apply to a 30  
combined board of health created under section 3709.07 of the 31  
Revised Code. 32

(B) Each member of the board shall be paid a sum not to 33  
exceed eighty dollars a day for the member's attendance at each 34  
meeting of the board. No member shall receive compensation for 35  
attendance at more than eighteen meetings in any year. 36

(C) Each member of the board shall receive travel expenses at 37  
rates established by the director of budget and management 38  
pursuant to section 126.31 of the Revised Code to cover the actual 39  
and necessary travel expenses incurred for travel to and from 40  
meetings that take place outside the county in which the member 41  
resides, except that any member may receive travel expenses for 42  
registration for any conference that takes place inside the county 43  
in which the member resides. 44

(D) A vacancy in the membership of the board shall be filled 45  
in the same manner as an original appointment and shall be for the 46  
unexpired term. When a vacancy occurs, in a position to be filled 47

by the district advisory council ~~3709.03 of the Revised Code the~~ 48  
~~that, the council~~ shall hold a special meeting pursuant to section 49  
3709.03 of the Revised Code ~~and appoint for the purpose of~~ 50  
~~appointing a member in the same manner described in that section~~ 51  
~~for appointing members at annual meetings of the council to fill~~ 52  
~~the vacancy.~~ 53

(E) A majority of the members of the board constitutes a 54  
quorum. 55

**Sec. 3709.03.** (A) There is hereby created in each general 56  
health district a district advisory council. A council shall 57  
consist of the president of the board of county commissioners, the 58  
chief executive of each municipal corporation not constituting a 59  
city health district, and the president of the board of township 60  
trustees of each township. The board of county commissioners, the 61  
legislative body of a municipal corporation, and the board of 62  
township trustees of a township may select an alternate from among 63  
themselves to serve if the president, the chief executive, or the 64  
president of the board of township trustees is unable to attend 65  
any meeting of the district advisory council. When attending a 66  
meeting on behalf of a council member, the alternate may vote on 67  
any matter on which the member is authorized to vote. 68

The council shall organize by selecting a chair and secretary 69  
from among its members. The council shall adopt bylaws governing 70  
its meetings, the transaction of business, and voting procedures. 71

The council shall meet annually in ~~march~~ March at a place 72  
determined by the chair and the health commissioner for the 73  
purpose of electing the chair and the secretary, ~~appointing a~~ 74  
~~member of~~ making necessary appointments to the board of health, 75  
receiving and considering the annual or special reports from the 76  
board of health, and making recommendations to the board of health 77  
or to the department of health in regard to matters for the 78

betterment of health and sanitation within the district or for 79  
needed legislation. The secretary of the council shall notify the 80  
district health commissioner and the director of health of the 81  
proceedings of such meeting. 82

Special meetings of the council shall be held on the order of 83  
any of the following: 84

(1) The director of health; 85

(2) The board of health; 86

(3) The lesser of five or a majority of district advisory 87  
council members. 88

The district health commissioner shall attend all meetings of 89  
the council. 90

(B) ~~At its annual meetings, the~~ The district advisory council 91  
shall appoint ~~one member~~ four members of the board of health, and 92  
the remaining member shall be appointed by the health district 93  
licensing council established under section 3709.41 of the Revised 94  
Code. At least one member of the board of health shall be a 95  
physician. Appointments shall be made with due regard to equal 96  
representation of all parts of the district. 97

(C) If at an annual or special meeting at which a member of 98  
the board of health is to be appointed fewer than a majority of 99  
the members of the district council are present, the council, by 100  
the majority vote of council members present, may organize an 101  
executive committee to make the appointment. An executive 102  
committee shall consist of five council members, including the 103  
president of the board of county commissioners, the council chair, 104  
the council secretary, and two additional council members selected 105  
by majority affirmative vote of the council members present at the 106  
meeting. The additional members selected shall include one 107  
representative of municipal corporations in the district that are 108  
not city health districts and one representative of townships in 109

the district. If an individual is eligible for more than one  
position on the executive committee due to holding a particular  
office, the individual shall fill one position on the committee  
and the other position shall be filled by a member selected by a  
majority affirmative vote of the council members present at the  
meeting. A council member's alternate for annual meetings may  
serve as the member's alternate at meetings of the executive  
committee.

Not later than thirty days after an executive committee is  
organized, the committee shall meet and the council chair shall  
present to the committee the matter of appointing a member of the  
board of health. The committee shall appoint the board member by  
majority affirmative vote. In the case of a combined health  
district, the executive committee shall appoint only members of  
the board of health that are to be appointed by the district  
advisory council, unless the contract for administration of health  
affairs in the combined district provides otherwise. If a majority  
affirmative vote is not reached within thirty days after the  
executive committee is organized, the director of health shall  
appoint the member of the board of health under the authority  
conferred by section 3709.03 of the Revised Code.

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

**Sec. 3709.05.** (A) Unless an administration of public health  
different from that specifically provided in this section is  
established and maintained under authority of its charter, or  
unless a combined city health district is formed under section  
3709.051 of the Revised Code, the legislative authority of each  
city constituting a city health district shall establish a board

of health<sup>7</sup>. The board shall be composed of ~~five~~ four members 141  
appointed by the mayor and confirmed by the legislative authority 142  
and one member appointed by the health district licensing council 143  
established under section 3709.41 of the Revised Code. 144

(B) Each member of the board shall be paid a sum not to 145  
exceed eighty dollars a day for the member's attendance at each 146  
meeting of the board. No member shall receive compensation for 147  
attendance at more than eighteen meetings in any year. 148

(C) Each member of the board shall receive travel expenses at 149  
rates established by the director of budget and management 150  
pursuant to section 126.31 of the Revised Code to cover the actual 151  
and necessary travel expenses incurred for travel to and from 152  
meetings that take place outside the county in which the member 153  
resides, except that any member may receive travel expenses for 154  
registration for any conference that takes place inside the county 155  
in which the member resides. 156

(D) A majority of the members constitutes a quorum, and the 157  
mayor shall be president of the board. 158

(E) The term of office of the members shall be five years 159  
from the date of appointment, except that of those first 160  
appointed, one shall serve for five years, one for four years, one 161  
for three years, one for two years, and one for one year, and 162  
thereafter one shall be appointed each year. 163

A vacancy in the membership of the board shall be filled in 164  
like manner as an original appointment and shall be for the 165  
unexpired term. 166

**Sec. 3709.07.** Except as provided in section 3709.071 of the 167  
Revised Code, when it is proposed that one or more city health 168  
districts unite with a general health district in the formation of 169  
a single district, the district advisory council of the general 170  
health district shall meet and vote on the question of union. It 171

shall require a majority affirmative vote of the members of the 172  
district advisory council to carry the question. The legislative 173  
authority of each city shall likewise vote on the question. A 174  
majority voting affirmatively shall be required for approval. When 175  
the majority of the district advisory council and the legislative 176  
authority have voted affirmatively, the chair of the council and 177  
the chief executive of each city shall enter into a contract for 178  
the administration of health affairs in the combined district. 179  
Such contract shall state the proportion of the expenses of the 180  
board of health or health department of the combined district to 181  
be paid by the city or cities and by the original general health 182  
district. The contract may provide that the administration of the 183  
combined district shall be taken over by either the board of 184  
health or health department of one of the cities, by the board of 185  
health of the general health district, or by a combined board of 186  
health. Such contract shall prescribe the date on which such 187  
change of administration shall be made. A copy of such contract 188  
shall be filed with the director of health. 189

The combined district shall constitute a general health 190  
district, and the board of health or health department of the 191  
city, the board of health of the original general health district, 192  
or the combined board of health, as may be agreed in the contract, 193  
shall have, within the combined district, all the powers granted 194  
to, and perform all the duties required of, the board of health of 195  
a general health district. 196

The district advisory council of the combined general health 197  
district shall consist of the members of the district advisory 198  
council of the original general health district and the chief 199  
executive of each city constituting a city health district, each 200  
member having one vote. 201

If the contract provides that the administration of the 202  
combined district shall be taken over by a combined board of 203

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

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

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

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

204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234



member, an individual must be a resident of the health district 235  
for which the council was created. 236

The appointing authority shall make initial appointments to 237  
the council not later than thirty days after the effective date of 238  
this section. Of the initial appointments to the council, 239  
one-third of the members, rounded to the nearest whole number, 240  
shall serve for a term ending three years after the effective date 241  
of this section; one-third, rounded to the nearest whole number, 242  
shall serve for a term ending four years after the effective date 243  
of this section; and the remaining members shall serve for a term 244  
ending five years after the effective date of this section. 245  
Thereafter, terms of office shall be five years, with each term 246  
ending on the same day of the same month as did the term that it 247  
succeeds. 248

Each member shall hold office from the date of the member's 249  
appointment until the end of the term for which the member was 250  
appointed. Members may be reappointed. 251

Vacancies shall be filled in the manner provided for original 252  
appointments. Any member appointed to fill a vacancy occurring 253  
prior to the expiration of the term for which the member's 254  
predecessor was appointed shall hold office as a member for the 255  
remainder of that term. A member shall continue in office 256  
subsequent to the expiration date of the member's term until the 257  
member's successor takes office or until a period of sixty days 258  
has elapsed, whichever occurs first. 259

Members of a health district licensing council shall serve 260  
without compensation, except to the extent that serving on the 261  
council is part of their regular duties of employment. 262

(B) Each licensing council shall organize by selecting from 263  
among its members a chairperson, secretary, and any other officers 264  
it considers necessary. Each council shall adopt bylaws for the 265  
regulation of its affairs and the conduct of its business. 266

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

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

**Sec. 3715.01.** (A) As used in this chapter: 281

(1) "Public health council" means the public health council established by section 3701.33 of the Revised Code. 282  
283

(2) "Person" means an individual, partnership, corporation, or association. 284  
285

(3) "Food" means: 286

(a) Articles used for food or drink for humans or animals; 287

(b) Chewing gum; 288

(c) Articles used for components of any such articles. 289

(4) "Drug" means: 290

(a) Articles recognized in the United States pharmacopoeia and national formulary, or any supplement to them; 291  
292

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; 293  
294  
295

(c) Articles, other than food, intended to affect the structure or any function of the body of humans or other animals;	296 297
(d) Articles intended for use as a component of any of the foregoing articles, other than devices or their components, parts, or accessories.	298 299 300
(5) "Device," except when used in division (B)(1) of this section and in division (A)(10) of section 3715.52, division (F) of section 3715.60, division (A)(5) of section 3715.64, and division (C) of section 3715.67 of the Revised Code, means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is any of the following:	301 302 303 304 305 306 307
(a) Recognized in the United States pharmacopoeia and national formulary, or any supplement to them;	308 309
(b) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in humans or animals;	310 311 312
(c) Intended to affect the structure or any function of the body of humans or animals, and that does not achieve any of its principal intended purposes through chemical action within or on the body of humans or animals and is not dependent upon being metabolized for the achievement of any of its principal intended purposes.	313 314 315 316 317 318
(6) "Cosmetic" means:	319
(a) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance;	320 321 322 323
(b) Articles intended for use as a component of any such article, except that "cosmetic" does not include soap.	324 325

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

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

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

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

(b) Accompanying such article.

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

(10) "New drug" means:

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

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

(11) "Contaminated with filth" applies to any food, drug, device, or cosmetic that has not been protected as far as may be

necessary by all reasonable means from dust, dirt, and all foreign  
or injurious substances.

355  
356

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

357  
358  
359

(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.

360  
361  
362  
363

(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:

364  
365  
366  
367  
368  
369  
370

(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;

371  
372  
373

(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.

374  
375  
376  
377

(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:

378  
379  
380

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

381  
382

(ii) Providing a licensed health professional authorized to  
prescribe drugs with a drug for the purpose of administering to

383  
384

patients or for using the drug in treating patients in the 385  
professional's office. 386

(15) "Dangerous drug" has the same meaning as in section 387  
4729.01 of the Revised Code. 388

(16) "Generically equivalent drug" means a drug that contains 389  
identical amounts of the identical active ingredients, but not 390  
necessarily containing the same inactive ingredients, that meets 391  
the identical compendial or other applicable standard of identity, 392  
strength, quality, and purity, including potency, and where 393  
applicable, content uniformity, disintegration times, or 394  
dissolution rates, as the prescribed brand name drug and the 395  
manufacturer or distributor holds, if applicable, either an 396  
approved new drug application or an approved abbreviated new drug 397  
application unless other approval by law or from the federal food 398  
and drug administration is required. 399

No drug shall be considered a generically equivalent drug for 400  
the purposes of this chapter if it has been listed by the federal 401  
food and drug administration as having proven bioequivalence 402  
problems. 403

(17) "Licensed health professional authorized to prescribe 404  
drugs" and "prescriber" have the same meanings as in section 405  
4729.01 of the Revised Code. 406

(18) "Home" means the primary residence occupied by the 407  
residence's owner, on the condition that the residence contains 408  
only one stove or oven used for cooking, which may be a double 409  
oven, designed for common residence usage and not for commercial 410  
usage, and that the stove or oven be operated in an ordinary 411  
kitchen within the residence. 412

(19) "Potentially hazardous food" means a food that is 413  
natural or synthetic, to which any of the following apply: 414

(a) It has a pH level greater than 4.6 when measured at 415  
seventy-five degrees fahrenheit or twenty-four degrees celsius. 416

(b) It has a water activity value greater than 0.85. 417

(c) It requires temperature control because it is in a form 418  
capable of supporting the rapid and progressive growth of 419  
infectious or toxigenic microorganisms, the growth and toxin 420  
production of clostridium botulinum, or in the case of raw shell 421  
eggs, the growth of salmonella enteritidis. 422

(20) "Cottage food production operation" means a person who, 423  
in the person's home, produces food items that are not potentially 424  
hazardous foods, including bakery products, jams, jellies, candy, 425  
fruit butter, and similar products specified in rules adopted 426  
pursuant to section 3715.025 of the Revised Code. 427

(B) For the purposes of sections 3715.52 to 3715.72 of the 428  
Revised Code: 429

(1) If an article is alleged to be misbranded because the 430  
labeling is misleading, or if an advertisement is alleged to be 431  
false because it is misleading, then in determining whether the 432  
labeling or advertisement is misleading, there shall be taken into 433  
account, among other things, not only representations made or 434  
suggested by statement, word, design, device, sound, or in any 435  
combination thereof, but also the extent to which the labeling or 436  
advertisement fails to reveal facts material in the light of such 437  
representations or material with respect to consequence which may 438  
result from the use of the article to which the labeling or 439  
advertisement relates under the conditions of use prescribed in 440  
the labeling or advertisement thereof or under such conditions of 441  
use as are customary or usual. 442

(2) The provisions regarding the selling of food, drugs, 443  
devices, or cosmetics include the manufacture, production, 444

processing, packing, exposure, offer, possession, and holding of 445  
any such article for sale; and the sale, dispensing, and giving of 446  
any such article, and the supplying or applying of any such 447  
articles in the conduct of any food, drug, or cosmetic 448  
establishment. The provisions do not prohibit a licensed health 449  
professional authorized to prescribe drugs from administering or 450  
personally furnishing a drug or device to a patient. 451

(3) The representation of a drug, in its labeling or 452  
advertisement, as an antiseptic is a representation that it is a 453  
germicide, except in the case of a drug purporting to be, or 454  
represented as, an antiseptic for inhibitory use as a wet 455  
dressing, ointment, dusting powder, or other use that involves 456  
prolonged contact with the body. 457

(4) Whenever jurisdiction is vested in the director of 458  
agriculture or the state board of pharmacy, the jurisdiction of 459  
the board shall be limited to the sale, offering for sale, giving 460  
away, delivery, or dispensing in any manner of drugs at the 461  
wholesale and retail levels or to the consumer and shall be 462  
exclusive in the case of such sale, offering for sale, giving 463  
away, delivery, or dispensing in any manner of drugs at the 464  
wholesale and retail levels or to the consumer in any place where 465  
prescriptions are dispensed or compounded. 466

(5) To assist in effectuating the provisions of those 467  
sections, the director of agriculture or state board of pharmacy 468  
may request assistance or data from any government or private 469  
agency or individual. 470

**Sec. 3715.021.** (A) As used in this section, "~~wholesale~~ food 471  
processing establishment" means a premises or part of a premises 472  
where food is processed, packaged, manufactured, or otherwise held 473  
or handled for distribution to another location or for sale or 474



distribution at wholesale to ~~persons other than the ultimate~~ 475  
consumers. "~~Wholesale food~~ Food processing establishment" includes 476  
the activities of a bakery, confectionery, cannery, bottler, 477  
warehouse, or distributor, and the activities of an entity that 478  
receives or salvages distressed food for sale or use as food. A 479  
"food processing establishment" does not include a cottage food 480  
production operation; a processor of maple syrup who boils sap 481  
when a minimum of seventy-five per cent of the sap used to produce 482  
the syrup is collected directly from trees by that processor; a 483  
processor of sorghum who processes sorghum juice when a minimum of 484  
seventy-five per cent of the sorghum juice used to produce the 485  
sorghum is extracted directly from sorghum plants by that 486  
processor; or a beekeeper who jars honey when a minimum of 487  
seventy-five per cent of the honey is from that beekeeper's own 488  
hives. 489

(B) The director of agriculture shall adopt rules in 490  
accordance with Chapter 119. of the Revised Code that establish, 491  
when otherwise not established by the Revised Code, standards and 492  
good manufacturing practices for ~~wholesale~~ food processing 493  
establishments, including the facilities of ~~wholesale~~ food 494  
processing establishments and their sanitation. The rules shall 495  
conform with or be equivalent to the standards for foods 496  
established by the United States food and drug administration in 497  
Title 21 of the Code of Federal Regulations. 498

A business or that portion of a business that is regulated by 499  
the department of agriculture under Chapter 917. or 918. of the 500  
Revised Code is not subject to regulation under this section as a 501  
~~wholesale~~ food processing establishment. 502

**Sec. 3715.022.** (A) All food products, including those 503  
produced and packaged by a cottage food production operation, and 504  
all packaged maple syrup, sorghum, and honey, are subject to food 505  
sampling conducted by the director of agriculture, or a 506

representative the director authorizes, to determine if a food product is misbranded or adulterated. A component of the food sampling conducted under this section may include the performance of sample analyses in accordance with section 3715.02 of the Revised Code.

507  
508  
509  
510  
511

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

512  
513  
514  
515

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

516  
517  
518  
519  
520

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

521  
522  
523  
524  
525

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

526  
527

(2) The name of the food product;

528

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

529  
530

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

531

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

532  
533  
534

(B) Food products identified and labeled in accordance with

535

division (A) of this section are acceptable food products that a 536  
retail food establishment or food service operation licensed under 537  
Chapter 3717. of the Revised Code may offer for sale or use in 538  
preparing and serving food. 539

**Sec. 3715.024.** (A) A maple syrup or sorghum processor and 540  
beekeeper described in division (A) of section 3715.021 of the 541  
Revised Code may request that the director of agriculture conduct 542  
a voluntary inspection of the processor's or beekeeper's 543  
facilities. After the inspection is completed, if the inspector 544  
determines that the facilities comply with the rules adopted by 545  
the director pursuant to division (B) of this section, the 546  
processor or beekeeper may place on the label required under 547  
section 3715.023 of the Revised Code a seal of conformity and 548  
inspection of the department of agriculture. 549

(B) The director shall adopt rules in accordance with Chapter 550  
119. of the Revised Code that establish the following: 551

(1) Standards that maple syrup or sorghum processors and 552  
beekeepers must satisfy in order to be permitted to place on the 553  
label of their food products a seal of conformity and inspection 554  
of the director, as described in division (A) of this section; 555

(2) The seal of conformity and inspection to be used for 556  
purposes described in division (A) of this section. 557

**Sec. 3715.025.** (A) A cottage food production operation shall 558  
not process acidified foods, low acid canned foods, or potentially 559  
hazardous foods. 560

(B) The director of agriculture shall adopt rules in 561  
accordance with Chapter 119. of the Revised Code specifying the 562  
food items a cottage food production operation may produce that 563  
are in addition to the food items identified by name in division 564  
(A)(20) of section 3715.01 of the Revised Code. The director shall 565

not adopt rules that permit a cottage food production operation to  
produce any food that is a potentially hazardous food.

566  
567  
568

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

569  
570  
571

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

572  
573  
574  
575  
576

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

577  
578  
579

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

580  
581  
582

(D) It has been produced, processed, prepared, packed, or  
held under unsanitary conditions whereby it may have become  
contaminated with filth, or whereby it may have been rendered  
diseased, unwholesome, or injurious to health.

583  
584  
585  
586

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

587  
588  
589

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

590  
591  
592

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

593  
594

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

595

the food. 596

(I) Damage or inferiority has been concealed in any manner. 597

(J) Any substance has been added to or mixed or packed with 598  
the food so as to increase its bulk or weight, reduce its quality 599  
or strength, or make it appear better or of greater value than it 600  
is. 601

(K) It is confectionery and it bears or contains any alcohol 602  
or nonnutritive article or substance other than harmless coloring, 603  
harmless flavoring, harmless resinous glaze not in excess of 604  
four-tenths of one per cent, harmless natural wax not in excess of 605  
four-tenths of one per cent, harmless natural gum, or pectin, 606  
except that this division shall not apply to any confectionery by 607  
reason of its containing less than one-half of one per cent by 608  
volume of alcohol derived solely from the use of flavoring 609  
extracts, or to any chewing gum by reason of its containing 610  
harmless nonnutritive masticatory substances. 611

(L) It bears or contains a coal-tar color other than one from 612  
a batch certified under authority of the "Federal Food, Drug, and 613  
Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended. 614  
615

(M) It has been processed or produced in violation of section 616  
3715.025 of the Revised Code. 617

**Sec. 3715.60.** Food is misbranded within the meaning of 618  
sections 3715.01, 3715.02, 3715.022, and 3715.52 to 3715.72 of the 619  
Revised Code, if: 620

(A) Its labeling is false or misleading in any particular. 621

(B) It is offered for sale under the name of another food. 622

(C) Its container is so made, formed, or filled as to be 623  
misleading. 624

(D) It is an imitation of another food, unless its label 625  
bears in type of uniform size and prominence, the word 626  
"imitation," and immediately thereafter the name of the food 627  
imitated. 628

(E) When it is in package form, it does not bear a label 629  
containing: 630

(1) The name and place of business of the manufacturer, 631  
packer, or distributor; 632

(2) An accurate statement of the quantity of the contents in 633  
terms of weight, measure, or numerical count; provided, that 634  
reasonable variations shall be permitted, and exemptions as to 635  
small packages shall be established by rules adopted by the 636  
director of agriculture; 637

(3) In the case of food subject to section 3715.023 of the 638  
Revised Code, the information specified in that section. 639

(F) Any word, statement, or other information required by or 640  
under authority of sections 3715.01, 3715.02, and 3715.52 to 641  
3715.72 of the Revised Code, to appear on the label or labeling is 642  
not prominently placed thereon with such conspicuousness as 643  
compared with other words, statements, designs, or devices, in the 644  
labeling, and in such terms as to render it likely to be read and 645  
understood by the ordinary individual under customary conditions 646  
of purchase and use. 647

(G) It purports to be, or is represented as, a food for which 648  
a definition and standard of identity have been prescribed by 649  
statute, or by any rule adopted under an existing statute, or by 650  
rule as provided by section 3715.02 of the Revised Code, unless: 651  
652

(1) It conforms to such definition and standard. 653

(2) Its label bears the name of the food specified in the 654

definition and standard, and, insofar as may be required by such  
statute or rules, the common names of optional ingredients, other  
than spices, flavoring, and coloring, present in such food.

655  
656  
657

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

658

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

659  
660  
661  
662  
663

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

664  
665  
666  
667  
668  
669

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

670  
671

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

672

(2) In case it is fabricated from two or more ingredients,  
the common or usual name of each ingredient; except that spices,  
flavorings, and colorings, other than those sold as such, may be  
designated as spices, flavorings, and colorings, without naming  
each; provided, that, to the extent that compliance with the  
requirements of division (I)(2) of this section is impractical or  
results in deception or unfair competition, exemptions shall be  
established by rules adopted by the director; and provided that  
these requirements shall not apply to any carbonated beverage of  
which a full and correct statement of the ingredients, to the  
extent prescribed by division (I)(2) of this section, has been  
filed under oath with the director.

673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684

(J) It purports to be or is represented to be for special

685

686 dietary uses, unless its label bears such information concerning  
687 its vitamin, mineral, and other dietary properties as is provided  
688 by rules proposed by the director and adopted by the public health  
689 council, as necessary, in order to fully inform purchasers as to  
690 its value for such uses.

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

697 **Sec. 3717.01.** As used in this chapter:

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

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

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

713 As used in this division:

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



(2) "Prepared" means any action that affects a food, 716  
including receiving and maintaining it at the temperature at which 717  
it was received. 718

(D) "Seasonal retail food establishment" means a retail food 719  
establishment, other than a mobile retail food establishment, that 720  
is operated for not more than six months in a licensing period. 721

(E) "Temporary retail food establishment" means a retail food 722  
establishment that is operated at an event for not more than five 723  
consecutive days, except when operated for more than five 724  
consecutive days pursuant to division (E)(2) of section 3717.23 of 725  
the Revised Code. 726

(F) "Food service operation" means a place, location, site, 727  
or separate area where food intended to be served in individual 728  
portions is prepared or served for a charge or required donation. 729  
As used in this division, "served" means a response made to an 730  
order for one or more individual portions of food in a form that 731  
is edible without washing, cooking, or additional preparation and 732  
"prepared" means any action that affects a food other than 733  
receiving or maintaining it at the temperature at which it was 734  
received. 735

Except when expressly provided otherwise, "food service 736  
operation" includes a catering food service operation, food 737  
delivery sales operation, mobile food service operation, seasonal 738  
food service operation, temporary food service operation, and 739  
vending machine location. 740

(G) "Catering food service operation" means a food service 741  
operation where food is prepared for serving at a function or 742  
event held at an off-premises site, for a charge determined on a 743  
per-function or per-event basis. 744

(H) "Food delivery sales operation" means a food service 745  
operation from which individual portions of food are ordered by a 746

customer, prepared at another food service operation or a retail 747  
food establishment, and delivered to the customer by a person 748  
other than an employee of the food service operation or retail 749  
food establishment that prepared the food. 750

(I) "Mobile food service operation" means a food service 751  
operation that is operated from a movable vehicle, portable 752  
structure, or watercraft and that routinely changes location, 753  
except that if the operation remains at any one location for more 754  
than forty consecutive days, the operation is no longer a mobile 755  
food service operation, ~~but is either a different type food~~ 756  
~~service operation or a retail food establishment according to the~~ 757  
~~activities being engaged in and the type of food being offered for~~ 758  
~~sale.~~ "Mobile food service operation" includes an a food service 759  
operation that does not remain at any one location for more than 760  
forty consecutive days and serves, in a manner consistent with 761  
division (F) of this section, only frozen desserts; beverages, 762  
nuts, popcorn, candy, or similar confections; bakery products 763  
identified in section 911.01 of the Revised Code; or any 764  
combination of those items. 765

(J) "Seasonal food service operation" means a food service 766  
operation, other than a mobile food service operation, that is 767  
operated for not more than six months in a licensing period. 768

(K) "Temporary food service operation" means a food service 769  
operation that is operated at an event for not more than five 770  
consecutive days, except when operated for more than five 771  
consecutive days pursuant to division (E)(2) of section 3717.43 of 772  
the Revised Code. 773

(L) "Vending machine location" means an area or room where 774  
one or more vending machines are installed and operated, except 775  
that if the machines within an area are separated by more than one 776  
hundred fifty feet, each area separated by that distance 777  
constitutes a separate vending machine location. As used in this 778

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.

779  
780  
781  
782

(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.

783  
784  
785

(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.

786  
787  
788

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

789

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

790  
791

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

792  
793  
794

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

795  
796  
797

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

798  
799

(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.

800  
801  
802  
803  
804  
805

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

806  
807  
808

(S) "Cottage food production operation" has the same meaning as in division (A)(20) of section 3715.01 of the Revised Code.

809  
810  
811

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

812  
813  
814

(1) Making recommendations for the Ohio uniform food safety code;

815  
816

(2) Examining specific food safety issues raised by the director of agriculture or director of health and making recommendations regarding those issues;

817  
818  
819

(3) Mediating unresolved issues among state agencies about the interpretation of rules adopted under this chapter and making recommendations regarding the issues;

820  
821  
822

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

823  
824  
825  
826

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

827  
828  
829

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

830  
831  
832  
833

~~(5)~~(7) Making recommendations to the director of agriculture and director of health regarding the licensing categories and inspection frequencies to be used in regulating retail food establishments and food service operations;

834  
835  
836  
837

~~(6)~~(8) Making recommendations to the director of health with respect to the program for certification of individuals in food protection and approval of courses in food protection.

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

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

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

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

**Sec. 3717.05.** (A) The director of agriculture and the public health council shall adopt rules establishing standards for safe food handling and sanitation in retail food establishments and food service operations. The rules shall be compiled as the Ohio

uniform food safety code, which shall be used by the licensors of 868  
retail food establishments and food ~~services~~ service operations in 869  
ensuring the safe handling of food in this state. All scientific 870  
provisions of the Ohio uniform food safety code that are relevant 871  
to both retail food establishments and food service operations 872  
shall be adopted by the director of agriculture and the public 873  
health council with each other's concurrence. 874

The Ohio uniform food safety code shall include the 875  
following: 876

(1) Criteria for sanitation in retail food establishments and 877  
food service operations; 878

(2) Criteria for equipment in retail food establishments and 879  
food service operations; 880

(3) Criteria for reviewing the facility layout and equipment 881  
specifications of retail food establishments and food service 882  
operations; 883

(4) A definition of "potentially hazardous" as it pertains to 884  
food in retail food establishments and to food in food service 885  
operations; 886

(5) Criteria to be used in evaluating the primary business of 887  
a person or government entity for purposes of determining whether 888  
the person or entity should be licensed as a retail food 889  
establishment or food service operation. 890

(B)(1) Except as provided in division (B)(2) of this section, 891  
if a model food code is established by the United States food and 892  
drug administration, the Ohio uniform food safety code shall be 893  
based on the most current version of the food and drug 894  
administration's model food code. If the food and drug 895  
administration adopts, modifies, or rescinds a provision in the 896  
model food code, not later than ~~nine~~ twelve months after the 897  
administration's action, the director of agriculture and public 898

health council shall adopt, amend, or rescind provisions in the 899  
Ohio uniform food safety code to ensure that it continues to 900  
conform with the model food code. 901

(2) The Ohio uniform food safety code may contain or omit 902  
provisions that do not correspond to the food and drug 903  
administration's model food code if the director of agriculture or 904  
the public health council, with each other's concurrence, 905  
determines either of the following: 906

(a) That rules can be adopted under this chapter that provide 907  
protection at least as effective as that which would be provided 908  
by basing the rules on the model food code; 909

(b) That local conditions warrant the adoption of standards 910  
that are different from the model food code. 911

**Sec. 3717.07.** (A) For purposes of establishing a licensing 912  
fee under sections 3717.25 and 3717.45 of the Revised Code, the 913  
director of agriculture and the public health council shall adopt 914  
rules establishing uniform methodologies for use in calculating 915  
the costs of licensing retail food establishments in the 916  
categories specified by the director and the costs of licensing 917  
food service operations in the categories specified by the 918  
council. In adopting the rules, the director of agriculture and 919  
the public health council shall consider any recommendations 920  
received from advisory boards or other entities representing the 921  
interests of retail food establishments and food service 922  
operations. 923

(B) The rules shall include provisions that do all of the 924  
following: 925

(1) Provide for calculations to be made according to fiscal 926  
years rather than licensing periods; 927

(2) Limit the direct costs that may be attributed to the use 928

of sanitarians by establishing appropriate statewide averages that 929  
may not be exceeded; 930

(3) Limit the indirect costs that may be included in the 931  
calculation of fees to an amount that does not exceed thirty per 932  
cent of the cost of the licensing program; 933

(4) Provide for a proportionate reduction in the fees to be 934  
charged if a licensor included anticipated costs in the 935  
immediately preceding calculation of licensing fees and the total 936  
amount of the anticipated costs was not incurred; 937

(5) Provide for a proportionate reduction in the fees to be 938  
charged if it is discovered through an audit by the auditor of 939  
state or through any other means that the licensor has charged or 940  
is charging a licensing fee that exceeds the amount that should 941  
have been charged; 942

(6) Provide for a twenty per cent reduction in the fees to be 943  
charged when the reduction is imposed as a penalty under division 944  
(C) of section 3717.071 of the Revised Code; 945

(7) With regard to any fees charged for licensing vending 946  
machine locations, the rules shall prohibit a licensor from 947  
increasing fees by a percentage of increase over the previous 948  
year's fee that exceeds the percentage of increase in the consumer 949  
price index for all urban consumers (United States city average, 950  
all items), prepared by the United States department of labor, 951  
bureau of labor statistics, for the immediately preceding calendar 952  
year. 953

Sec. 3717.071. (A) The director of agriculture and director 954  
of health shall prescribe forms for use in calculating the 955  
licensing fees that may be charged under sections 3717.25 and 956  
3717.45 of the Revised Code. Each licensor that charges licensing 957  
fees shall use the forms in calculating its costs according to the 958



uniform methodologies established in rules adopted under section 959  
3717.07 of the Revised Code. 960

(B)(1) If the licensor is a board of health, the board shall 961  
submit the form to the director of agriculture in the case of fees 962  
being charged for retail food establishment licenses, and to the 963  
director of health in the case of fees being charged for food 964  
service operation licenses. The board shall submit the form to the 965  
appropriate director not later than the first day of the fiscal 966  
year in which the fees will apply. A form that is mailed to the 967  
director shall be considered to have been submitted on its 968  
postmark date. 969

(2) On receipt of a form from a board of health, the director 970  
of agriculture or director of health shall review the form to 971  
determine if the board has calculated its fees in accordance with 972  
the uniform methodologies. The director may request that the 973  
auditor of state conduct an audit of the board to determine if the 974  
fees it established are appropriate. The audit is in addition to 975  
the annual or biennial audit conducted pursuant to division (A) of 976  
section 117.11 of the Revised Code, and the cost of the audit is 977  
the responsibility of the board of health. If at any time the 978  
director of agriculture or director of health has reasonable cause 979  
to believe that a different audit of a board of health is in the 980  
public interest, the director may request that the auditor of 981  
state conduct the audit. If the audit is conducted, the cost of 982  
the audit is the responsibility of the board of health. 983

(C)(1) If a board of health fails to submit the forms as 985  
required under division (B)(1) of this section and the failure has 986  
occurred not more than twice in the immediately preceding 987  
five-year period, the board is subject to the following penalties: 988

(a) If the form is late by one but not more than five working 989  
days, a fine of fifty dollars for each working day the form is 990

late; 991

(b) If the form is late by six working days but not more than 992  
ten working days, a fine of one hundred dollars for each working 993  
day the form is late; 994

(c) If the form is late by more than ten working days, the 995  
board shall reduce by twenty per cent the fees it charges under 996  
section 3717.25 or 3717.45 of the Revised Code during the next 997  
succeeding fiscal year. 998

(2) If a board fails to submit the forms and the failure has 999  
occurred more than twice in the immediately preceding five-year 1000  
period, the board shall reduce by twenty per cent the fees it 1001  
charges under section 3717.25 or 3717.45 of the Revised Code 1002  
during the next succeeding fiscal year. 1003

(3) A board of health that is required to pay a fine or 1004  
reduce its licensing fees shall not include any part of the cost 1005  
of the penalty in the fees it charges under section 3717.25 or 1006  
3717.45 of the Revised Code or the fees it charges in operating 1007  
any other licensing program. 1008

**Sec. 3717.11.** (A) Each board of health shall be surveyed for 1009  
the purpose of determining whether the board is qualified and has 1010  
the capacity to administer and enforce this chapter and the rules 1011  
adopted under it and to abide by the Ohio uniform food safety 1012  
code. If the board licenses or proposes to license retail food 1013  
establishments, the survey shall be conducted by the director of 1014  
agriculture. If the board licenses or proposes to license food 1015  
service operations, the survey shall be conducted by the director 1016  
of health. 1017

Each board shall be surveyed by each director at least once 1018  
every three years. Surveys shall be conducted in accordance with 1019  
rules adopted under sections 3717.33 and 3717.52 of the Revised 1020

Code, as applicable. The directors shall schedule and conduct 1021  
their surveys in a manner that minimizes, to the extent 1022  
practicable, intrusion on and inconvenience to the board. 1023

If a survey demonstrates that the board is qualified and has 1024  
the requisite capacity, the director conducting the survey shall 1025  
approve the board as the licenser of retail food establishments or 1026  
food service operations, whichever is being considered, for the 1027  
district the board serves. If a survey demonstrates that a board 1028  
is not qualified or does not have the requisite capacity, the 1029  
director conducting the survey shall not approve the board as a 1030  
licensor, or shall revoke the director's approval, whichever is 1031  
appropriate. The board may appeal the decision to deny or revoke 1032  
approval to the director taking the action. The appeal shall be 1033  
conducted in accordance with rules adopted under section 3717.33 1034  
or 3717.52 of the Revised Code, as applicable. 1035

If approval is denied or revoked, the director taking the 1036  
action shall designate an alternative licenser for the health 1037  
district served by the board. The alternative licenser shall be a 1038  
board of health that is qualified and has the requisite capacity 1039  
to serve as alternative licenser, except that if a qualified and 1040  
capable board is not available from a health district within 1041  
reasonable proximity, the director that denied or revoked the 1042  
board's approval shall act as the alternative licenser. 1043

(B) When the approval of a board is revoked, all valid 1044  
licenses issued by that board for retail food establishments or 1045  
food service operations, whichever have been affected, shall be 1046  
treated as though issued by the alternative licenser. The licenses 1047  
shall remain valid until scheduled to expire unless earlier 1048  
suspended or revoked by the alternative licenser. 1049

(C) All fees charged under section 3717.25 or 3717.45 of the 1050  
Revised Code that have not been expended by a board that has had 1051  
its approval revoked shall be transferred to the alternative 1052

licensor. A board of health acting as alternative licensor shall  
deposit the fees into a special fund it establishes for receipt of  
funds pertaining to the district for which it is acting as  
licensor. If the director of agriculture is acting as licensor,  
the director shall deposit the fees in the food safety fund  
created in section 915.24 of the Revised Code. If the director of  
health is acting as licensor, the director shall deposit the fees  
in the general operations fund created in section 3701.83 of the  
Revised Code. All subsequent fees charged in the district by the  
alternative licensor shall be deposited in the same manner. Moneys  
deposited under this division shall be used solely for the  
administration and enforcement of this chapter and the rules  
adopted under it in the district for which the alternative  
licensor is acting as licensor.

(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.

1084

Sec. 3717.111. (A) A board of health acting as a licensor of retail food establishments or food service operations may withdraw from serving as licensor of either or both. Before withdrawing as licensor, the board shall provide written notice of its intent to withdraw. If the withdrawal applies to the licensing of retail food establishments, the board shall provide the notice to the director of agriculture. If the withdrawal applies to the licensing of food service operations, the board shall provide the notice to the director of health. On receipt of the notice, the responsible director shall designate an alternative licensor for the health district served by the board. The alternative licensor shall be a board of health that is qualified and has the requisite capacity to serve as alternative licensor, except that if a qualified and capable board is not available from a health district within reasonable proximity, the director of agriculture or director of health, as appropriate, shall act as the alternative licensor.

1085  
1086  
1087  
1088  
1089  
1090  
1091  
1092  
1093  
1094  
1095  
1096  
1097  
1098  
1099  
1100  
1101

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

1102  
1103  
1104  
1105  
1106  
1107

(C) All fees charged under section 3717.25 or 3717.45 of the Revised Code that have not been expended by a board that has withdrawn as licensor shall be transferred to the alternative licensor. A board of health acting as alternative licensor shall deposit the fees into a special fund it establishes for receipt of funds pertaining to the district for which it is acting as licensor. If the director of agriculture is acting as licensor,

1108  
1109  
1110  
1111  
1112  
1113  
1114

the director shall deposit the fees in the food safety fund  
created in section 915.24 of the Revised Code. If the director of  
health is acting as licensor, the director shall deposit the fees  
in the general operations fund created in section 3701.83 of the  
Revised Code. All subsequent fees charged in the district by the  
alternative licensor shall be deposited in the same manner. Moneys  
deposited under this division shall be used solely for the  
administration and enforcement of this chapter and the rules  
adopted under it in the district for which the alternative  
licensor is acting as licensor.

1115  
1116  
1117  
1118  
1119  
1120  
1121  
1122  
1123  
1124

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

1125  
1126

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

1127  
1128  
1129  
1130

(2) An entity exempt under divisions (B)(1) to (9), or (11), ~~or (12)~~ to (13) of section 3717.42 of the Revised Code from the requirement to be licensed as a food service operation and an entity exempt under division (B)(10) of that section if the entity is regulated by the department of agriculture as a ~~wholesale~~ processing establishment under section 3715.021 of the Revised Code;

1131  
1132  
1133  
1134  
1135  
1136  
1137

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

1138  
1139  
1140  
1141  
1142  
1143  
1144

(B) All of the following are exempt from the requirement to

1145

be licensed as a retail food establishment: 1146

(1) An ~~operation~~ establishment with commercially prepackaged 1147  
foods that are not potentially hazardous and contained in 1148  
displays, the total space of which equals less than one two 1149  
hundred cubic feet; 1150

(2) A ~~storage facility of less than five hundred square feet~~ 1151  
~~containing prepackaged foods that are not potentially hazardous;~~ 1152  
person at a farmers market that is registered with the director of 1153  
agriculture pursuant to section 3717.221 of the Revised Code that 1154  
offers for sale only one or more of the following: 1155

(a) Fresh unprocessed fruits or vegetables; 1156

(b) Products of a cottage food production operation; 1157

(c) Maple syrup, sorghum, or honey that is produced by a 1158  
maple syrup or sorghum producer or beekeeper described in division 1159  
(A) of section 3715.021 of the Revised Code; 1160

(d) Commercially prepackaged food that is not potentially 1161  
hazardous, on the condition that the food is contained in 1162  
displays, the total space of which equals less than one hundred 1163  
cubic feet on the premises where the person conducts business at 1164  
the farmers market. 1165

(3) A ~~roadside market that~~ person who offers for sale at a 1166  
roadside stand only fresh fruits and fresh vegetables that are 1167  
unprocessed; 1168

(4) A nonprofit organization exempt from federal income 1169  
taxation under section 501(c)(3) of the "Internal Revenue Code of 1170  
1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, that raises 1171  
funds by selling ~~displayed foods, if the~~ foods that are not 1172  
potentially hazardous ~~and the display is made~~ for not more than 1173  
seven consecutive days or more than fifty-two separate days during 1174  
a licensing period. This exemption extends to any individual or 1175

group raising all of its funds during the ~~display~~ time periods 1176  
specified in division (B)(4) of this section for the benefit of 1177  
the nonprofit organization by selling ~~displayed~~ foods under the 1178  
same conditions. 1179

(5) An establishment that offers food contained in displays 1180  
of less than five hundred square feet, and if required to be 1181  
licensed would be classified as risk level one pursuant to rules 1182  
establishing licensing categories for retail food establishments 1183  
adopted under section 3717.33 of the Revised Code, on the 1184  
condition that the establishment offers the food for sale at 1185  
retail not more than six months in each calendar year; 1186

(6) A cottage food production operation, on the condition 1187  
that the operation offers its products directly to the consumer 1188  
from the site where the products are produced; 1189

(7) A maple syrup and sorghum processor and beekeeper 1190  
described in division (A) of section 3715.021 of the Revised Code, 1191  
on the condition that the processor or beekeeper offers only maple 1192  
syrup, sorghum, or honey directly to the consumer from the site 1193  
where those products are processed; 1194

(8) A person who annually maintains five hundred or fewer 1195  
birds, on the condition that the person offers the eggs from those 1196  
birds directly to the consumer from the location where the eggs 1197  
are produced or at a farm product auction to which division 1198  
(B)(11) of this section applies; 1199

(9) A person who annually raises and slaughters one thousand 1200  
or fewer chickens, on the condition that the person offers dressed 1201  
chickens directly to the consumer from the location where the 1202  
chickens are raised and slaughtered or at a farm product auction 1203  
to which division (B)(11) of this section applies; 1204

(10) A person who raises, slaughters, and processes the meat 1205  
of nonamenable species described in divisions (A) and (B) of 1206



section 918.12 of the Revised Code, on the condition that the 1207  
person offers the meat directly to the consumer from the location 1208  
where the meat is processed or at a farm product auction to which 1209  
division (B)(11) of this section applies; 1210

(11) A farm product auction, on the condition that it is 1211  
registered with the director pursuant to section 3717.221 of the 1212  
Revised Code that offers for sale at the farm product auction only 1213  
one or more of the following: 1214

(a) The products described in divisions (B)(8) to (10) of 1215  
this section that are produced, raised, slaughtered, or processed, 1216  
as appropriate, by persons described in divisions (B)(8) to (10) 1217  
of this section; 1218

(b) Fresh unprocessed fruits or vegetables; 1219

(c) Products of a cottage food production operation; 1220

(d) Maple syrup, sorghum, or honey that is produced by a 1221  
maple syrup or sorghum producer or beekeeper described in division 1222  
(A) of section 3715.021 of the Revised Code. 1223

(12) An establishment that, with respect to offering food for 1224  
sale, offers only alcoholic beverages or prepackaged beverages 1225  
that are not potentially hazardous; 1226

(13) An establishment that, with respect to offering food for 1227  
sale, offers only alcoholic beverages, prepackaged beverages that 1228  
are not potentially hazardous, or commercially prepackaged food 1229  
that is not potentially hazardous, on the condition that the 1230  
commercially prepackaged food is contained in displays, the total 1231  
space of which equals less than two hundred cubic feet on the 1232  
premises of the establishment; 1233

(14) An establishment that, with respect to offering food for 1234  
sale, offers only fountain beverages that are not potentially 1235  
hazardous; 1236

<u>(15) A person who offers for sale only one or more of the</u>	1237
<u>following foods at a festival or celebration, on the condition</u>	1238
<u>that the festival or celebration is organized by a political</u>	1239
<u>subdivision of the state and lasts for a period not longer than</u>	1240
<u>seven consecutive days:</u>	1241
<u>(a) Fresh unprocessed fruits or vegetables;</u>	1242
<u>(b) Products of a cottage food production operation;</u>	1243
<u>(c) Maple syrup, sorghum, or honey if produced by a maple</u>	1244
<u>syrup or sorghum processor or beekeeper as described in division</u>	1245
<u>(A) of section 3715.021 of the Revised Code;</u>	1246
<u>(d) Commercially prepackaged food that is not potentially</u>	1247
<u>hazardous, on the condition that the food is contained in</u>	1248
<u>displays, the total space of which equals less than one hundred</u>	1249
<u>cubic feet;</u>	1250
<u>(e) Fruit butter produced at the festival or celebration and</u>	1251
<u>sold from the production site.</u>	1252
<u>(16) A farm market on the condition that it is registered</u>	1253
<u>with the director pursuant to section 3717.221 of the Revised Code</u>	1254
<u>that offers for sale at the farm market only one or more of the</u>	1255
<u>following:</u>	1256
<u>(a) Fresh unprocessed fruits or vegetables;</u>	1257
<u>(b) Products of a cottage food production operation;</u>	1258
<u>(c) Maple syrup, sorghum, or honey that is produced by a</u>	1259
<u>maple syrup or sorghum producer or beekeeper described in division</u>	1260
<u>(A) of section 3715.021 of the Revised Code;</u>	1261
<u>(d) Commercially prepackaged food that is not potentially</u>	1262
<u>hazardous, on the condition that the food is contained in</u>	1263
<u>displays, the total space of which equals less than one hundred</u>	1264
<u>cubic feet on the premises where the person conducts business at</u>	1265
<u>the farm market;</u>	1266

(e) Cider and other juices manufactured on site at the farm market; 1267  
1268

(f) The products or items described in divisions (B)(8) to (10) of this section, on the condition that those products or items were produced by the person offering to sell them, and further conditioned that, with respect to eggs offered, the person offering to sell them annually maintains five hundred or fewer birds, and with respect to dressed chickens offered, the person annually raises and slaughters one thousand or fewer chickens. 1269  
1270  
1271  
1272  
1273  
1274  
1275

**Sec. 3717.221.** (A) Any of the following may register with the director of agriculture: 1276  
1277

(1) A farm market, which is a location where a producer offers fruits, vegetables, and other items for sale; 1278  
1279

(2) A farmers market, which is a location where producers congregate to offer fruits, vegetables, and other items for sale; 1280  
1281

(3) A farm product auction, which is a location where agricultural products, including food products, are offered for sale at auction. 1282  
1283  
1284

(B) The director shall inspect each farm market, farmers market, and farm product auction that registers under this section. Inspections shall occur at a frequency considered appropriate by the director and shall be conducted in accordance with sanitation standards established in rules adopted under this section. 1285  
1286  
1287  
1288  
1289  
1290

(C) The director shall adopt rules in accordance with Chapter 119. of the Revised Code as necessary to administer this section. 1291  
1292  
1293

**Sec. 3717.23.** (A) Each person or government entity seeking a retail food establishment license or the renewal of a license 1294  
1295

shall apply to the appropriate licensor on a form provided by the 1296  
licensor. A licensor shall use a form prescribed and furnished to 1297  
the licensor by the director of agriculture or a form prescribed 1298  
by the licensor that has been approved by the director. The 1299  
applicant shall include with the application all information 1300  
necessary for the licensor to process the application, as 1301  
requested by the licensor. 1302

An application for a retail food establishment license, other 1303  
than an application for a mobile retail food establishment 1304  
license, shall be submitted to the licensor for the health 1305  
district in which the retail food establishment is located. An 1306  
application for a mobile retail food establishment license shall 1307  
be submitted to the licensor for the health district in which the 1308  
applicant's business headquarters are located, or, if the 1309  
headquarters are located outside this state, to the licensor for 1310  
the district where the applicant will first operate in this state. 1311

(B) The licensor shall review all applications received. The 1312  
licensor shall issue a license for a new retail food establishment 1313  
when the applicant submits a complete application and the licensor 1314  
determines that the applicant meets all other requirements of this 1315  
chapter and the rules adopted under it for receiving the license. 1316  
The licensor shall issue a renewed license on receipt of a 1317  
complete renewal application. 1318

The licensor shall issue licenses for retail food 1319  
establishments on forms prescribed and furnished by the director 1320  
of agriculture. If the license is for a mobile retail food 1321  
establishment, the licensor shall post the establishment's layout, 1322  
equipment, and items to be sold on the back of the license. 1323

A mobile retail food establishment license issued by one 1324  
licensor shall be recognized by all other licensors in this state. 1325

(C)(1) A retail food establishment license expires at the end 1326  
of the licensing period for which the license is issued, except as 1327

follows:

1328

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

1329

1330

1331

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

1332

1333

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

1334

1335

1336

(D) A retail food establishment license may be renewed, except that a temporary retail food establishment license is not renewable. A person or government entity seeking license renewal shall submit an application for renewal to the licensor not later than the first day of March, except in the case of a mobile or seasonal retail food establishment, when the renewal application shall be submitted before commencing operation in a new licensing period. A licensor may renew a license prior to the first day of March or the first day of operation in a new licensing period, but not before the first day of February immediately preceding the licensing period for which the license is being renewed.

1337

1338

1339

1340

1341

1342

1343

1344

1345

1346

1347

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

1348

1349

1350

1351

1352

1353

1354

1355

1356

1357

(E)(1) A licensor may issue not more than ten temporary

1358

retail food establishment licenses per licensing period to the  
same person or government entity to operate at different events  
within the licensor's jurisdiction. For each particular event, a  
licensor may issue only one temporary retail food establishment  
license to the same person or government entity.

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

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

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

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

(F) The licensor may place restrictions or conditions on a  
retail food establishment license, based on the equipment or  
facilities of the establishment, limiting the types of food that  
may be stored, processed, prepared, manufactured, or otherwise  
held or handled for retail sale. Limitations pertaining to a  
mobile retail food establishment shall be posted on the back of  
the license.

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

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

**Sec. 3717.25.** (A) A licensor may charge fees for issuing and 1389  
renewing retail food establishment licenses. Any licensing fee 1390  
charged shall be used solely for the administration and 1391  
enforcement of the provisions of this chapter and the rules 1392  
adopted under it applicable to retail food establishments. 1393

Any licensing fee charged under this section shall be based 1394  
on the licensor's costs of regulating retail food establishments, 1395  
as determined according to the uniform methodologies established 1396  
under section 3717.07 of the Revised Code. If the licensor is a 1397  
board of health, a fee may be disapproved by the district advisory 1398  
council in the case of a general health district or the 1399  
legislative authority of the city in the case of a city health 1400  
district. A disapproved fee shall not be charged by the board of 1401  
health. 1402

At least thirty days prior to establishing a licensing fee, 1403  
the licensor shall hold a public hearing regarding the proposed 1404  
fee. At least thirty days prior to the public hearing, the 1405  
licensor shall give written notice of the hearing to each person 1406  
or government entity holding a retail food establishment license 1407  
that may be affected by the proposed fee. The notice shall be 1408  
mailed to the last known address of the licensee and shall specify 1409  
the date, time, and place of the hearing and the amount of the 1410  
proposed fee. On request, the licensor shall provide the completed 1411  
uniform methodology used in the calculation of the licensor's 1412  
costs and the proposed fee. 1413

(B) In addition to licensing fees, a licensor may charge fees 1414  
for any of the following: 1415

(1) Review of facility layout and equipment specifications 1416  
pertaining to retail food establishments, other than mobile and 1417  
temporary retail food establishments; 1418

(2) Any necessary collection and bacteriological examination 1419

of samples from retail food establishments or similar services 1420  
specified in rules adopted under this chapter by the director of 1421  
agriculture; 1422

(3) Attendance at a course of study offered by the licensor 1423  
in food protection as it pertains to retail food establishments, 1424  
if the course is approved under section 3717.09 of the Revised 1425  
Code. 1426

(C) The director may determine by rule an amount to be 1427  
collected from applicants for retail food establishment licenses 1428  
for use by the director in administering and enforcing the 1429  
provisions of this chapter and the rules adopted under it 1430  
applicable to retail food establishments. Licensors shall collect 1431  
the amount prior to issuing an applicant's new or renewed license. 1432  
If a licensing fee is charged under this section, the licensor 1433  
shall collect the amount at the same time the fee is collected. 1434  
Licensors are not required to provide notice or hold public 1435  
hearings regarding amounts collected under this division. 1436

Not later than sixty days after the last day of the month in 1437  
which a license is issued, the licensor shall certify the amount 1438  
collected under this division and transmit the amount to the 1439  
treasurer of state. All amounts received shall be deposited into 1440  
the food safety fund created in section 915.24 of the Revised 1441  
Code. The director shall use the amounts solely for the 1442  
administration and enforcement of the provisions of this chapter 1443  
and the rules adopted under it applicable to retail food 1444  
establishments. 1445

When adopting rules regarding the amounts collected under 1446  
this division, the director shall make available during the rule 1447  
making process the current and projected expenses of administering 1448  
and enforcing the provisions of this chapter and the rules adopted 1449  
under it applicable to retail food establishments and the total of 1450  
all amounts that have been deposited in the food safety fund 1451



pursuant to this division.

1452

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

1453  
1454  
1455  
1456  
1457  
1458  
1459  
1460  
1461  
1462  
1463  
1464  
1465

(B) A person or government entity holding a retail food establishment license shall permit the licenser to inspect the retail food establishment for purposes of determining compliance with this chapter and the rules adopted under it or investigating a complaint concerning the establishment. On request of the licenser, the ~~licensee~~ license holder shall permit the licenser to examine the records of the retail food establishment to obtain information about the purchase, receipt, or use of food, supplies, and equipment.

1466  
1467  
1468  
1469  
1470  
1471  
1472  
1473  
1474

A licenser may inspect any mobile retail food establishment being operated within the licenser's district. If an inspection of a mobile retail food establishment is conducted by a licenser other than the licenser that issued the license for the establishment, a report of the inspection shall be sent to the issuing licenser. The issuing licenser may use the inspection report to suspend or revoke the license under section 3717.29 or 3717.30 of the Revised Code.

1475  
1476  
1477  
1478  
1479  
1480  
1481  
1482

(C) An inspection may include the following:	1483
(1) An investigation to determine the identity and source of a particular food;	1484 1485
(2) Removal from use of any equipment, utensils, hand tools, or parts of facilities found to be maintained in a condition that presents a clear and present danger to the public health.	1486 1487 1488
<b>Sec. 3717.29.</b> (A) This section applies when the licensor of retail food establishments is a board of health.	1489 1490
(B) A board of health may suspend or revoke a retail food establishment license on determining that the license holder is in violation of any requirement of this chapter or the rules adopted under it applicable to retail food establishments, including a violation evidenced by documented failure to maintain sanitary conditions within the establishment.	1491 1492 1493 1494 1495 1496
(C)(1) Except in the case of a violation that presents a clear and present danger to the public health, before initiating action to suspend or revoke a retail food establishment license, the board shall give the license holder written notice specifying each violation and a reasonable time within which the license holder must correct each violation to avoid suspension or revocation of the license. The board may extend the time specified in the notice for correcting a violation if the license holder is making a good faith effort to correct it.	1497 1498 1499 1500 1501 1502 1503 1504 1505
If the license holder fails to correct the violation in the time granted by the board, the board may initiate action to suspend or revoke the retail food establishment license by giving the license holder written notice of the proposed suspension or revocation. The board shall include in the notice a description of the procedure for appealing the proposed suspension or revocation. The license holder may appeal the proposed suspension or	1506 1507 1508 1509 1510 1511 1512

revocation by giving written notice to the board. The license  
holder shall specify in the notice whether a hearing is requested.  
The appeal shall be conducted in accordance with division (C)(3)  
of this section.

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

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

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

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

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

operating a mobile retail food establishment, either the licensor 1544  
that issued the license or the licensor for the health district in 1545  
which the establishment is being operated may suspend the license. 1546

A suspension under division (D)(1) of this section takes 1547  
effect immediately and remains in effect until the board rescinds 1548  
the suspension. When a mobile retail food establishment license is 1549  
suspended under this division, the licensor that suspended the 1550  
license shall hold the license until the suspension is lifted and 1551  
the licensor receives from the license holder written notice of 1552  
the next location at which the license holder proposes to operate 1553  
the retail food establishment. 1554

After suspending a license under division (D)(1) of this 1555  
section, the licensor shall give the license holder written notice 1556  
of the procedure for appealing the suspension. The license holder 1557  
may appeal the suspension by giving written notice to the board 1558  
and specifying in the notice whether a hearing is requested. The 1559  
appeal shall be conducted in accordance with division (D)(2) of 1560  
this section. 1561

A health commissioner, if authorized by the board to take the 1562  
action, may take any action that may be taken by the board under 1563  
division (D)(1) of this section. A health commissioner who 1564  
suspends a license under this authority, on determining that there 1565  
is no longer a clear and present danger to the public health, may 1566  
rescind the suspension without consulting the board. 1567

(2) If the license holder appeals a suspension under division 1568  
(D)(1) of this section, the board shall determine whether the 1569  
clear and present danger to the public health continues to exist 1570  
by majority vote of the board members who are present at a meeting 1571  
at which there is a quorum. 1572

If the board determines that there is no longer a clear and 1573  
present danger to the public health, the board shall rescind the 1574  
suspension. If the board determines that the clear and present 1575

danger continues to exist, the board shall issue an order 1576  
continuing the suspension. 1577

(3) An appeal requested under division (D)(1) of this section 1578  
shall be conducted in accordance with procedures established in 1579  
rules adopted by the director of agriculture under section 3717.33 1580  
of the Revised Code. If the license holder requests a hearing, the 1581  
board shall hold the hearing not later than two business days 1582  
after the board receives the request. The board shall hold the 1583  
hearing before issuing an order under division (D)(2) of this 1584  
section but may conduct the hearing at the same meeting at which 1585  
issuance of the order is considered. In the case of a suspension 1586  
of a mobile retail food establishment, the appeal shall be made to 1587  
the licensor that suspended the license. 1588

(E) A license holder may appeal an order issued under 1589  
division (C) or (D) of this section to the common pleas court of 1590  
the county in which the licensor is located. 1591

**Sec. 3717.42.** (A) The following are not food service 1592  
operations: 1593

(1) A retail food establishment licensed under this chapter, 1594  
including a retail food establishment that provides the services 1595  
of a food service operation pursuant to an endorsement issued 1596  
under section ~~3717.44~~ 3717.24 of the Revised Code; 1597

(2) An entity exempt from the requirement to be licensed as a 1598  
retail food establishment under division (B) of section 3717.22 of 1599  
the Revised Code; 1600

(3) A business or that portion of a business that is 1601  
regulated by the federal government or the department of 1602  
agriculture as a food manufacturing or food processing ~~operation~~ 1603  
business, including ~~an operation~~ a business or that portion of ~~an~~ 1604  
~~operation~~ a business regulated by the department of agriculture 1605

under Chapter 911., 913., 915., 917., 918., or 925. of the Revised Code. 1606  
1607

(B) All of the following are exempt from the requirement to be licensed as a food service operation: 1608  
1609

(1) A private home in which individuals related by blood, marriage, or law reside and in which the food that is prepared or served is intended only for those individuals and their nonpaying guests; 1610  
1611  
1612  
1613

(2) A private home operated as a bed-and-breakfast that prepares and offers food to guests, if the home is owner-occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, and the number of guests served does not exceed sixteen; 1614  
1615  
1616  
1617  
1618

(3) A stand operated on the premises of a private home by one or more children under the age of twelve, if the food served is not potentially hazardous; 1619  
1620  
1621

(4) A residential facility that accommodates not more than sixteen residents; is licensed, certified, registered, or otherwise regulated by the federal government or by the state or a political subdivision of the state; and prepares food for or serves food to only the residents of the facility, the staff of the facility, and any nonpaying guests of residents or staff; 1622  
1623  
1624  
1625  
1626  
1627

(5) A church, school, fraternal or veterans' organization, volunteer fire organization, or volunteer emergency medical service organization preparing or serving food intended for individual portion service on its premises for not more than seven consecutive days or not more than fifty-two separate days during a licensing period. This exemption extends to any individual or group raising all of its funds during the time periods specified in division (B)(5) of this section for the benefit of the church, school, or organization by preparing or serving food intended for 1628  
1629  
1630  
1631  
1632  
1633  
1634  
1635  
1636

- individual portion service under the same conditions. 1637
- (6) A common carrier that prepares or serves food, if the 1638  
carrier is regulated by the federal government; 1639
- (7) A food service operation serving five or fewer 1640  
individuals daily; 1641
- (8) A type A or type B family day-care home, as defined in 1642  
section 5104.01 of the Revised Code, that prepares or serves food 1643  
for the children receiving day-care; 1644
- (9) A vending machine location where the only foods dispensed 1645  
are foods from one or both of the following categories: 1646
- (a) Prepackaged foods that are not potentially hazardous; 1647
- (b) Nuts, panned or wrapped bulk chewing gum, or panned or 1648  
wrapped bulk candies. 1649
- (10) A place servicing the vending machines at a vending 1650  
machine location described in division (B)(9) of this section; 1651
- (11) A commissary servicing vending machines that dispense 1652  
only milk, milk products, or frozen desserts that are under a 1653  
state or federal inspection and analysis program; 1654
- (12) A "controlled location vending machine location," which 1655  
means a vending machine location at which all of the following 1656  
apply: 1657
- (a) The vending machines dispense only foods that are not 1658  
potentially hazardous; 1659
- (b) The machines are designed to be filled and maintained in 1660  
a sanitary manner by untrained persons; 1661
- (c) Minimal protection is necessary to ensure against 1662  
contamination of food and equipment. 1663
- (13) A private home that prepares and offers food to guests, 1664  
if the home is owner-occupied, meals are served on the premises of 1665

that home, the number of meals served does not exceed one hundred 1666  
fifteen per week, and the home displays a notice in a place 1667  
conspicuous to all of its guests informing them that the home is 1668  
not required to be licensed as a food service operation; 1669

(14) An individual who prepares full meals or meal 1670  
components, such as pies or baked goods, in the individual's home 1671  
to be served off the premises of that home, if the number of meals 1672  
or meal components prepared for that purpose does not exceed 1673  
twenty in a seven-day period. 1674

**Sec. 3717.43.** (A) Each person or government entity requesting 1675  
a food service operation license or the renewal of a license shall 1676  
apply to the appropriate licensor on a form provided by the 1677  
licensor. Licensors shall use a form prescribed and furnished to 1678  
the licensor by the director of health or a form prescribed by the 1679  
licensor that has been approved by the director. The applicant 1680  
shall include with the application all information necessary for 1681  
the licensor to process the application, as requested by the 1682  
licensor. 1683

~~Applications~~ An application for a food service operation 1684  
~~licenses license,~~ other than ~~those~~ an application for a mobile ~~and~~ 1685  
~~or~~ catering food service operation ~~licenses license,~~ shall be 1686  
submitted to the licensor for the health district in which the 1687  
food service operation is located. ~~Applications~~ An application for 1688  
a mobile food service operation ~~licenses license~~ shall be 1689  
submitted to the licensor for the health district in which the 1690  
applicant's business headquarters are located, or, if the 1691  
headquarters are located outside this state, to the licensor for 1692  
the district where the applicant will first operate in this state. 1693  
~~Applications~~ An application for a catering food service operation 1694  
~~licenses license~~ shall be submitted to the licensor for the 1695  
district where the applicant's base of operation is located. 1696



(B) The licensor shall review all applications received. The 1697  
licensor shall issue a license for a new food service operation 1698  
when the applicant submits a complete application and the licensor 1699  
determines that the applicant meets all other requirements of this 1700  
chapter and the rules adopted under it for receiving the license. 1701  
The licensor shall issue a renewed license on receipt of a 1702  
complete renewal application. 1703

The licensor shall issue licenses for food service operations 1704  
on forms prescribed and furnished by the director of health. If 1705  
the license is for a mobile food service operation, the licensor 1706  
shall post the operation's layout, equipment, and menu on the back 1707  
of the license. 1708

A mobile or catering food service operation license issued by 1709  
one licensor shall be recognized by all other licensors in this 1710  
state. 1711

(C)(1) A food service operation license expires at the end of 1712  
the licensing period for which the license is issued, except as 1713  
follows: 1714

(a) A license issued to a new food service operation after 1715  
the first day of December shall not expire until the end of the 1716  
licensing period next succeeding issuance of the license. 1717

(b) A temporary food service operation license expires at the 1718  
end of the period for which it is issued. 1719

(2) All food service operation licenses remain valid until 1720  
they are scheduled to expire unless earlier suspended or revoked 1721  
under section 3717.49 of the Revised Code. 1722

(D) A food service operation license may be renewed, except 1723  
that a temporary food service operation license is not renewable. 1724  
~~Applications A person or government entity seeking license renewal~~ 1725  
~~shall submit an application for renewal of food service operation~~ 1726  
~~licenses other than those for mobile and seasonal food service~~ 1727

~~operation licenses shall be submitted to the licensor not later~~ 1728  
~~than the first day of March. Renewal applications for, except that~~ 1729  
~~in the case of a mobile and or seasonal food service operation~~ 1730  
~~licenses the renewal application shall be submitted ~~prior to~~~~ 1731  
~~before commencing operation in a new licensing period. A licensor~~ 1732  
may renew a license prior to the first day of March or the first 1733  
day of operation in a new licensing period, but not before the 1734  
first day of February immediately preceding the licensing period 1735  
for which the license is being renewed. 1736

If a renewal application is not filed with the licensor or 1737  
postmarked on or before the first day of March or, in the case of 1738  
a mobile or seasonal food service operation, the first day of 1739  
operation in a new licensing period, the licensor shall assess a 1740  
penalty ~~of. The amount of the penalty shall be the lesser of fifty~~ 1741  
~~dollars or twenty-five per cent of the fee charged for renewing~~ 1742  
licenses, if the licensor charges renewal fees. If an applicant is 1743  
subject to a penalty, the licensor shall not renew the license 1744  
until the applicant pays the penalty. 1745

(E)(1) A licensor may issue not more than ten temporary food 1746  
service operation licenses per licensing period to the same person 1747  
or government entity to operate at different events within the 1748  
licensor's jurisdiction. For each particular event, a licensor may 1749  
issue only one temporary food service operation license to the 1750  
same person or government entity. 1751

(2) A licensor may issue a temporary food service operation 1752  
license to operate for more than five consecutive days if both of 1753  
the following apply: 1754

(a) The operation will be operated at an event organized by a 1755  
county agricultural society or independent agricultural society 1756  
organized under Chapter 1711. of the Revised Code; 1757

(b) The person who will receive the license is a resident of 1758  
the county or one of the counties for which the agricultural 1759

society was organized. 1760

(3) A person may be granted only one temporary food service 1761  
operation license per licensing period pursuant to division (E)(2) 1762  
of this section. 1763

(F) The licensor may place restrictions or conditions on a 1764  
food service operation license limiting the types of food that may 1765  
be prepared or served by the food service operation based on the 1766  
equipment or facilities of the food service operation. Limitations 1767  
pertaining to a mobile or catering food service operation shall be 1768  
posted on the back of the license. 1769

(G) The person or government entity holding a license for a 1770  
food service operation shall display the license for that food 1771  
service operation at all times at the licensed location. A person 1772  
or government entity holding a catering food service operation 1773  
license shall also maintain a copy of the license at each catered 1774  
event. 1775

(H) With the assistance of the department of health, the 1776  
licensor, to the extent practicable, shall computerize the process 1777  
for licensing food service operations. 1778

**Sec. 4303.021.** Permit A-1-A may be issued to the holder of an 1779  
A-1 or A-2 permit to sell beer and any intoxicating liquor at 1780  
retail, only by the individual drink in glass or from a container, 1781  
provided such A-1-A permit premises are situated on the same 1782  
parcel or tract of land as the related A-1 or A-2 manufacturing 1783  
permit premises or are separated therefrom only by public streets 1784  
or highways or by other lands owned by the holder of the A-1 or 1785  
A-2 permit and used by the holder in connection with or in 1786  
promotion of the holder's A-1 or A-2 permit business. The fee for 1787  
this permit is three thousand one hundred twenty-five dollars. The 1788  
holder of an A-1-A permit may sell beer and any intoxicating 1789  
liquor during the same hours as the holders of D-5 permits under 1790

this chapter or Chapter 4301. of the Revised Code or the rules of 1791  
the liquor control commission and shall obtain a ~~restaurant~~ 1792  
license as a retail food establishment or a food service operation 1793  
pursuant to ~~section 3717.43~~ Chapter 3717. of the Revised Code and 1794  
operate as a restaurant for purposes of this chapter. 1795

Except as otherwise provided in this section, no new A-1-A 1796  
permit shall be issued to the holder of an A-1 or A-2 permit 1797  
unless the sale of beer and intoxicating liquor under class D 1798  
permits is permitted in the precinct in which the A-1 or A-2 1799  
permit is located and, in the case of an A-2 permit, unless the 1800  
holder of the A-2 permit manufactures or has a storage capacity of 1801  
at least twenty-five thousand gallons of wine per year. The 1802  
immediately preceding sentence does not prohibit the issuance of 1803  
an A-1-A permit to an applicant for such a permit who is the 1804  
holder of an A-1 permit and whose application was filed with the 1805  
division of liquor control before June 1, 1994. The liquor control 1806  
commission shall not restrict the number of A-1-A permits which 1807  
may be located within a precinct. 1808

**Sec. 4303.13.** Permit D-1 may be issued to the owner or 1809  
operator of a hotel or ~~restaurant~~ of a retail food establishment 1810  
or a food service operation licensed pursuant to ~~section 3717.43~~ 1811  
Chapter 3717. of the Revised Code that operates as a restaurant 1812  
for purposes of this chapter, or of a club, amusement park, 1813  
drugstore, lunch stand, boat, or vessel, and shall be issued to a 1814  
person described in division (B) of this section, to sell beer at 1815  
retail either in glass or container, for consumption on the 1816  
premises where sold; and, except as otherwise provided in division 1817  
(B) of this section, to sell beer at retail in other receptacles 1818  
or in original containers having a capacity of not more than five 1819  
and one-sixth gallons not for consumption on the premises where 1820  
sold. The fee for this permit is one hundred eighty-eight dollars 1821  
for each location, boat, or vessel. 1822

**Sec. 4303.14.** Permit D-2 may be issued to the owner or 1823  
operator of a hotel or ~~restaurant~~ of a retail food establishment 1824  
or a food service operation licensed pursuant to ~~section 3717.43~~ 1825  
Chapter 3717. of the Revised Code that operates as a restaurant 1826  
for purposes of this chapter, or of a club, boat, or vessel, to 1827  
sell wine and prepared and bottled cocktails, cordials, and other 1828  
mixed beverages manufactured and distributed by holders of A-4 and 1829  
B-4 permits at retail, either in glass or container, for 1830  
consumption on the premises where sold. The holder of such permit 1831  
may also sell wine and prepared and bottled cocktails, cordials, 1832  
and other mixed beverages in original packages and not for 1833  
consumption on the premises where sold or for resale. The fee for 1834  
this permit is two hundred eighty-two dollars for each location, 1835  
boat, or vessel. 1836

**Sec. 4303.15.** Permit D-3 may be issued to the owner or 1837  
operator of a hotel or ~~restaurant~~ of a retail food establishment 1838  
or a food service operation licensed pursuant to ~~section 3717.43~~ 1839  
Chapter 3717. of the Revised Code that operates as a restaurant 1840  
for purposes of this chapter, or of a club, boat, or vessel, to 1841  
sell spirituous liquor at retail, only by the individual drink in 1842  
glass or from the container, for consumption on the premises where 1843  
sold. No sales of intoxicating liquor shall be made by a holder of 1844  
a D-3 permit after one a.m. The fee for this permit is six hundred 1845  
dollars for each location, boat, or vessel. 1846

**Sec. 4303.18.** Permit D-5 may be issued to the owner or 1847  
operator of a retail food establishment or a food service 1848  
operation licensed pursuant to Chapter 3717. of the Revised Code 1849  
that operates as a restaurant or night club for purposes of this 1850  
chapter, to sell beer and any intoxicating liquor at retail, only 1851  
by the individual drink in glass and from the container, for 1852

consumption on the premises where sold, and to sell the same 1853  
products in the same manner and amounts not for consumption on the 1854  
premises as may be sold by holders of D-1 and D-2 permits. A 1855  
person who is the holder of both a D-3 and D-3a permit need not 1856  
obtain a D-5 permit. The fee for this permit is one thousand eight 1857  
hundred seventy-five dollars. 1858

**Sec. 4303.181.** (A) Permit D-5a may be issued either to the 1859  
owner or operator of a hotel or motel that is required to be 1860  
licensed under section 3731.03 of the Revised Code, that contains 1861  
at least fifty rooms for registered transient guests, and that 1862  
qualifies under the other requirements of this section, or to the 1863  
owner or operator of a restaurant specified under this section, to 1864  
sell beer and any intoxicating liquor at retail, only by the 1865  
individual drink in glass and from the container, for consumption 1866  
on the premises where sold, and to registered guests in their 1867  
rooms, which may be sold by means of a controlled access alcohol 1868  
and beverage cabinet in accordance with division (B) of section 1869  
4301.21 of the Revised Code; and to sell the same products in the 1870  
same manner and amounts not for consumption on the premises as may 1871  
be sold by holders of D-1 and D-2 permits. The premises of the 1872  
hotel or motel shall include a ~~restaurant that is~~ retail food 1873  
establishment or a food service operation licensed pursuant to 1874  
~~section 3717.43 Chapter 3717.~~ of the Revised Code, that operates 1875  
as a restaurant for purposes of this chapter and that is 1876  
affiliated with the hotel or motel and within or contiguous to the 1877  
hotel or motel, and that serves food within the hotel or motel, 1878  
but the principal business of the owner or operator of the hotel 1879  
or motel shall be the accommodation of transient guests. In 1880  
addition to the privileges authorized in this division, the holder 1881  
of a D-5a permit may exercise the same privileges as the holder of 1882  
a D-5 permit. 1883

The owner or operator of a hotel, motel, or restaurant who 1884

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 1916  
shall be determined by subtracting the number of D-3 and D-5 1917  
permits issued in the enclosed shopping center from the number of 1918  
D-5b permits that otherwise may be issued at the enclosed shopping 1919  
center under the formulas provided in this division. Except as 1920  
provided in this section, no quota shall be placed on the number 1921  
of D-5b permits that may be issued. Notwithstanding any quota 1922  
provided in this section, the holder of any D-5b permit first 1923  
issued in accordance with this section is entitled to its renewal 1924  
in accordance with section 4303.271 of the Revised Code. 1925  
1926

The holder of a D-5b permit issued before April 4, 1984, 1927  
whose tenancy is terminated for a cause other than nonpayment of 1928  
rent, may return the D-5b permit to the division of liquor 1929  
control, and the division shall cancel that permit. Upon 1930  
cancellation of that permit and upon the permit holder's payment 1931  
of taxes, contributions, premiums, assessments, and other debts 1932  
owing or accrued upon the date of cancellation to this state and 1933  
its political subdivisions and a filing with the division of a 1934  
certification of that payment, the division shall issue to that 1935  
person either a D-5 permit, or a D-1, a D-2, and a D-3 permit, as 1936  
that person requests. The division shall issue the D-5 permit, or 1937  
the D-1, D-2, and D-3 permits, even if the number of D-1, D-2, 1938  
D-3, or D-5 permits currently issued in the municipal corporation 1939  
or in the unincorporated area of the township where that person's 1940  
proposed premises is located equals or exceeds the maximum number 1941  
of such permits that can be issued in that municipal corporation 1942  
or in the unincorporated area of that township under the 1943  
population quota restrictions contained in section 4303.29 of the 1944  
Revised Code. Any D-1, D-2, D-3, or D-5 permit so issued shall not 1945  
be transferred to another location. If a D-5b permit is canceled 1946  
under the provisions of this paragraph, the number of D-5b permits 1947  
that may be issued at the enclosed shopping center for which the 1948



D-5b permit was issued, under the formula provided in this 1949  
division, shall be reduced by one if the enclosed shopping center 1950  
was entitled to more than one D-5b permit under the formula. 1951  
1952

The fee for this permit is one thousand eight hundred 1953  
seventy-five dollars. 1954

(C) Permit D-5c may be issued ~~either~~ to the owner or operator 1955  
of a ~~restaurant that is~~ retail food establishment or a food 1956  
service operation licensed pursuant to ~~section 3717.43~~ Chapter 1957  
3717. of the Revised Code that operates as a restaurant for 1958  
purposes of this chapter and that qualifies under the other 1959  
requirements of this section to sell beer and any intoxicating 1960  
liquor at retail, only by the individual drink in glass and from 1961  
the container, for consumption on the premises where sold, and to 1962  
sell the same products in the same manner and amounts not for 1963  
consumption on the premises as may be sold by holders of D-1 and 1964  
D-2 permits. In addition to the privileges authorized in this 1965  
division, the holder of a D-5c permit may exercise the same 1966  
privileges as the holder of a D-5 permit. 1967

To qualify for a D-5c permit, the owner or operator of a 1968  
~~restaurant that is~~ retail food establishment or a food service 1969  
operation licensed pursuant to ~~section 3717.43~~ Chapter 3717. of 1970  
the Revised Code that operates as a restaurant for purposes of 1971  
this chapter, shall have operated the restaurant at the proposed 1972  
premises for not less than twenty-four consecutive months 1973  
immediately preceding the filing of the application for the 1974  
permit, have applied for a D-5 permit no later than December 31, 1975  
1988, and appear on the division's quota waiting list for not less 1976  
than six months immediately preceding the filing of the 1977  
application for the permit. In addition to these requirements, the 1978  
proposed D-5c permit premises shall be located within a municipal 1979  
corporation and further within an election precinct that, at the 1980

time of the application, has no more than twenty-five per cent of  
its total land area zoned for residential use.

1981  
1982  
1983

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

1984  
1985  
1986

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

1987  
1988  
1989  
1990  
1991

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

1992  
1993

(D) Permit D-5d may be issued to ~~either~~ the owner or operator  
of a ~~restaurant that is~~ retail food establishment or a food  
service operation licensed pursuant to ~~section 3717.43~~ Chapter  
3717. of the Revised Code that operates as a restaurant for  
purposes of this chapter and that is located at an airport  
operated by a board of county commissioners pursuant to section  
307.20 of the Revised Code or at an airport operated by a regional  
airport authority pursuant to Chapter 308. of the Revised Code.  
Not more than one D-5d permit shall be issued in each county. The  
holder of a D-5d permit may sell beer and any intoxicating liquor  
at retail, only by the individual drink in glass and from the  
container, for consumption on the premises where sold, and may  
sell the same products in the same manner and amounts not for  
consumption on the premises where sold as may be sold by the  
holders of D-1 and D-2 permits. In addition to the privileges  
authorized in this division, the holder of a D-5d permit may  
exercise the same privileges as the holder of a D-5 permit.

1994  
1995  
1996  
1997  
1998  
1999  
2000  
2001  
2002  
2003  
2004  
2005  
2006  
2007  
2008  
2009  
2010

A D-5d permit shall not be transferred to another location.  
Except as otherwise provided in this division, no quota

2011  
2012

restrictions shall be placed on the number of such permits that  
may be issued.

2013  
2014

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

2015  
2016

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

2017  
2018  
2019  
2020  
2021  
2022

(1) Is permanently docked at one location;

2023

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

2024  
2025

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

2026  
2027

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

2028

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

2029  
2030  
2031

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

2032  
2033  
2034  
2035  
2036  
2037  
2038  
2039  
2040  
2041

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

2042

(F) Permit D-5f may be issued to ~~either the owner or the~~ 2043  
operator of a retail food establishment or a food service 2044  
operation ~~that is~~ licensed under ~~section 3717.43~~ Chapter 3717. of 2045  
the Revised Code that operates as a restaurant for purposes of 2046  
this chapter and that meets all of the following: 2047

(1) It contains not less than twenty-five hundred square feet 2048  
of floor area. 2049

(2) It is located on or in, or immediately adjacent to, the 2050  
shoreline of, a navigable river. 2051

(3) It provides docking space for twenty-five boats. 2052

(4) It provides entertainment and recreation, provided that 2053  
not less than fifty per cent of the business on the permit 2054  
premises shall be preparing and serving meals for a consideration. 2055

In addition, each application for a D-5f permit shall be 2056  
accompanied by a certification from the local legislative 2057  
authority that the issuance of the D-5f permit is not inconsistent 2058  
with that political subdivision's comprehensive development plan 2059  
or other economic development goal as officially established by 2060  
the local legislative authority. 2061

The holder of a D-5f permit may sell beer and intoxicating 2062  
liquor at retail, only by the individual drink in glass and from 2063  
the container, for consumption on the premises where sold. 2064

A D-5f permit shall not be transferred to another location. 2065  
No more than fifteen D-5f permits shall be issued by the division 2066  
of liquor control, and no more than two such permits shall be 2067  
issued in any county. However, the division shall not issue a D-5f 2068  
permit if the permit premises or proposed permit premises are 2069  
located within an area in which the sale of spirituous liquor by 2070  
the glass is prohibited. 2071

A fee for this permit is one thousand eight hundred 2072

seventy-five dollars.

2073

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

2074

2075

2076

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

2077

2078

2079

2080

2081

2082

2083

2084

2085

2086

2087

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

2088

2089

2090

2091

2092

2093

2094

2095

2096

2097

2098

2099

2100

2101

(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

2102

2103

2104

the Revised Code that operates as a restaurant for purposes of 2105  
this chapter and that meets all of the following requirements: 2106

(1) It is located in a municipal corporation or a township 2107  
with a population of fifty thousand or less. 2108

(2) It has inside seating capacity for at least one hundred 2109  
forty persons. 2110

(3) It has at least four thousand square feet of floor area. 2111  
2112

(4) It offers full-course meals, appetizers, and sandwiches. 2113

(5) Its receipts from beer and liquor sales do not exceed 2114  
twenty-five per cent of its total gross receipts. 2115

(6) The value of its real and personal property exceeds seven 2116  
hundred twenty-five thousand dollars. 2117

The holder of a D-5i permit shall cause an independent audit 2118  
to be performed at the end of one full year of operation following 2119  
issuance of the permit in order to verify the requirements of 2120  
division (I)(5) of this section. The results of the independent 2121  
audit shall be transmitted to the division. Upon determining that 2122  
the receipts of the holder from beer and liquor sales exceeded 2123  
twenty-five per cent of its total gross receipts, the division 2124  
shall suspend the permit of the permit holder under section 2125  
4301.25 of the Revised Code and may allow the permit holder to 2126  
elect a forfeiture under section 4301.252 of the Revised Code. 2127

The holder of a D-5i permit may sell beer and any 2128  
intoxicating liquor at retail, only by the individual drink in 2129  
glass and from the container, for consumption on the premises 2130  
where sold, and may sell the same products in the same manner and 2131  
amounts not for consumption on the premises where sold as may be 2132  
sold by the holders of D-1 and D-2 permits. The holder of a D-5i 2133  
permit shall sell no beer or intoxicating liquor for consumption 2134  
on the premises where sold after two-thirty a.m. In addition to 2135

the privileges authorized in this division, the holder of a D-5i 2136  
permit may exercise the same privileges as the holder of a D-5 2137  
permit. 2138

A D-5i permit shall not be transferred to another location. 2139  
The division of liquor control shall not renew a D-5i permit 2140  
unless the food service operation for which it is issued continues 2141  
to meet the requirements described in divisions (I)(1) to (6) of 2142  
this section. No quota restrictions shall be placed on the number 2143  
of D-5i permits that may be issued. The fee for this permit is one 2144  
thousand eight hundred seventy-five dollars. 2145

(J)(1) Permit D-5j may be issued to ~~either~~ the owner or the 2146  
operator of a retail food establishment or a food service 2147  
operation ~~that is~~ licensed under ~~section 3717.43~~ Chapter 3717. of 2148  
the Revised Code to sell beer and intoxicating liquor at retail, 2149  
only by the individual drink in glass and from the container, for 2150  
consumption on the premises where sold and to sell beer and 2151  
intoxicating liquor in the same manner and amounts not for 2152  
consumption on the premises where sold as may be sold by the 2153  
holders of D-1 and D-2 permits. The holder of a D-5j permit may 2154  
exercise the same privileges, and shall observe the same hours of 2155  
operation, as the holder of a D-5 permit. 2156

(2) The D-5j permit shall be issued only within a community 2157  
entertainment district that is designated under section 4301.80 of 2158  
the Revised Code and that is located in a municipal corporation 2159  
with a population of at least one hundred thousand. 2160

(3) The location of a D-5j permit may be transferred only 2161  
within the geographic boundaries of the community entertainment 2162  
district in which it was issued and shall not be transferred 2163  
outside the geographic boundaries of that district. 2164

(4) Not more than one D-5j permit shall be issued within each 2165  
community entertainment district for each five acres of land 2166

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

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

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

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

(C) Permit D-6 shall be issued to the holder of a D-5a  
permit, and to the holder of a D-3 or D-3a permit who is the owner  
or operator of a hotel or motel that is required to be licensed  
under section 3731.03 of the Revised Code, that contains at least  
fifty rooms for registered transient guests, and that has on its  
premises a restaurant retail food establishment or a food service



operation licensed pursuant to ~~section 3717.43~~ Chapter 3717. of 2198  
the Revised Code that operates as a restaurant for purposes of 2199  
this chapter and is affiliated with the hotel or motel and within 2200  
or contiguous to the hotel or motel and serving food within the 2201  
hotel or motel, to allow sale under such permit between the hours 2202  
of ten a.m. and midnight on Sunday, whether or not that sale has 2203  
been authorized under section 4301.361, 4301.364, 4301.365, or 2204  
4301.366 of the Revised Code. 2205

(D) The holder of a D-6 permit that is issued to a sports 2206  
facility may make sales under the permit between the hours of 2207  
eleven a.m. and midnight on any Sunday on which a professional 2208  
baseball, basketball, football, hockey, or soccer game is being 2209  
played at the sports facility. As used in this division, "sports 2210  
facility" means a stadium or arena that has a seating capacity of 2211  
at least four thousand and that is owned or leased by a 2212  
professional baseball, basketball, football, hockey, or soccer 2213  
franchise or any combination of those franchises. 2214

(E) Permit D-6 shall be issued to the holder of any permit 2215  
that authorizes the sale of beer or intoxicating liquor and that 2216  
is issued to a premises located in or at the Ohio historical 2217  
society area or the state fairgrounds, as defined in division (B) 2218  
of section 4301.40 of the Revised Code, to allow sale under that 2219  
permit between the hours of ten a.m. and midnight on Sunday, 2220  
whether or not that sale has been authorized under section 2221  
4301.361, 4301.364, 4301.365, or 4301.366 of the Revised Code. 2222

(F) Permit D-6 shall be issued to the holder of any permit 2223  
that authorizes the sale of intoxicating liquor and that is issued 2224  
to an outdoor performing arts center to allow sale under that 2225  
permit between the hours of one p.m. and midnight on Sunday, 2226  
whether or not that sale has been authorized under section 2227  
4301.361 of the Revised Code. A D-6 permit issued under this 2228  
division is subject to the results of an election, held after the 2229

D-6 permit is issued, on question (B)(4) as set forth in section 2230  
4301.351 of the Revised Code. Following the end of the period 2231  
during which an election may be held on question (B)(4) as set 2232  
forth in that section, sales of intoxicating liquor may continue 2233  
at an outdoor performing arts center under a D-6 permit issued 2234  
under this division, unless an election on that question is held 2235  
during the permitted period and a majority of the voters voting in 2236  
the precinct on that question vote "no." 2237

As used in this division, "outdoor performing arts center" 2238  
means an outdoor performing arts center that is located on not 2239  
less than eight hundred acres of land and that is open for 2240  
performances from the first day of April to the last day of 2241  
October of each year. 2242

(G) If the restriction to licensed premises where the sale of 2243  
food and other goods and services exceeds fifty per cent of the 2244  
total gross receipts of the permit holder at the premises is 2245  
applicable, the division of liquor control may accept an affidavit 2246  
from the permit holder to show the proportion of the permit 2247  
holder's gross receipts derived from the sale of food and other 2248  
goods and services. If the liquor control commission determines 2249  
that affidavit to have been false, it shall revoke the permits of 2250  
the permit holder at the premises concerned. 2251

(H) The fee for the D-6 permit is two hundred fifty dollars 2252  
when it is issued to the holder of an A-1-A, A-2, D-2, D-3, D-3a, 2253  
D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, 2254  
D-5i, D-5j, or D-7 permit. The fee for the D-6 permit is two 2255  
hundred dollars when it is issued to the holder of a C-2 permit. 2256

**Sec. 4303.183.** Permit D-7 may be issued to the holder of any 2257  
D-2 permit issued by the division of liquor control, or if there 2258  
is an insufficient number of D-2 permit holders to fill the resort 2259  
quota, to the operator of a retail food establishment or a food 2260

service operation required to be licensed under ~~section 3717.43~~ 2261  
Chapter 3717. of the Revised Code that operates as a restaurant 2262  
for purposes of this chapter and which qualifies under the other 2263  
requirements of this section, to sell beer and any intoxicating 2264  
liquor at retail, only by the individual drink in glass and from 2265  
the container, for consumption on the premises where sold. Not 2266  
less than fifty per cent of the business on the permit premises 2267  
shall be preparing and serving meals for a consideration in order 2268  
to qualify for and continue to hold such D-7 permit. The permit 2269  
premises shall be located in a resort area. 2270

"Resort area" means a municipal corporation, township, 2271  
county, or any combination thereof, which provides entertainment, 2272  
recreation, and transient housing facilities specifically intended 2273  
to provide leisure time activities for persons other than those 2274  
whose permanent residence is within the "resort area" and who 2275  
increase the population of the "resort area" on a seasonal basis, 2276  
and which experiences seasonal peaks of employment and 2277  
governmental services as a direct result of population increase 2278  
generated by the transient, recreating public. A resort season 2279  
shall begin on the first day of May and end on the last day of 2280  
October. Notwithstanding section 4303.27 of the Revised Code, such 2281  
permits may be issued for resort seasons without regard to the 2282  
calendar year or permit year. Quota restrictions on the number of 2283  
such permits shall take into consideration the transient 2284  
population during the resort season, the custom and habits of 2285  
visitors and tourists, and the promotion of the resort and tourist 2286  
industry. The fee for this permit is three hundred seventy-five 2287  
dollars per month. 2288

Any suspension of a D-7 permit shall be satisfied during the 2289  
resort season in which such suspension becomes final. If such 2290  
suspension becomes final during the off-season, or if the period 2291  
of the suspension extends beyond the last day of October, the 2292

suspension or remainder thereof shall be satisfied during the next 2293  
resort season. 2294

The ownership of a D-7 permit may be transferred from one 2295  
permit holder to another. The holder of a D-7 permit may file an 2296  
application to transfer such permit to a new location within the 2297  
same resort area, provided that such permit holder shall be the 2298  
owner or operator of a retail food establishment or a food service 2299  
operation, required to be licensed under ~~section 3717.43~~ Chapter 2300  
3717. of the Revised Code, that operates as a restaurant for 2301  
purposes of this chapter, at such new location. 2302

**Section 2.** That existing sections 3709.02, 3709.03, 3709.05, 2303  
3709.07, 3715.01, 3715.021, 3715.59, 3715.60, 3717.01, 3717.03, 2304  
3717.05, 3717.07, 3717.11, 3717.22, 3717.23, 3717.25, 3717.27, 2305  
3717.29, 3717.42, 3717.43, 4303.021, 4303.13, 4303.14, 4303.15, 2306  
4303.18, 4303.181, 4303.182, and 4303.183 of the Revised Code are 2307  
hereby repealed. 2308

**Section 3.** The amendments made by this act to sections 2309  
3709.02, 3709.03, 3709.05, and 3709.07 of the Revised Code with 2310  
respect to the membership of boards of health do not affect the 2311  
terms of the board members holding office on the effective date of 2312  
this act. After that date, the first vacancy that occurs, other 2313  
than a vacancy to be filled by a physician, shall be filled by a 2314  
member selected by the health district licensing council pursuant 2315  
to section 3709.41 of the Revised Code, as enacted by this act. 2316  
Until that vacancy is filled, the health district licensing 2317  
council shall ensure that at least one of its members attends all 2318  
meetings of the board. 2319

**Section 4.** Section 3709.02 of the Revised Code is presented 2320  
in this act as a composite of the section as amended by both Am. 2321  
Sub. H.B. 117 and Am. Sub. H.B. 355 of the 121st General Assembly. 2322

The General Assembly, applying the principle stated in division 2323  
(B) of section 1.52 of the Revised Code that amendments are to be 2324  
harmonized if reasonably capable of simultaneous operation, finds 2325  
that the composite is the resulting version of the section in 2326  
effect prior to the effective date of the section as presented in 2327  
this act. 2328

**Section 5.** Section 3709.05 of the Revised Code is presented 2329  
in this act as a composite of the section as amended by both Am. 2330  
Sub. H.B. 117 and Am. Sub. H.B. 355 of the 121st General Assembly. 2331  
The General Assembly, applying the principle stated in division 2332  
(B) of section 1.52 of the Revised Code that amendments are to be 2333  
harmonized if reasonably capable of simultaneous operation, finds 2334  
that the composite is the resulting version of the section in 2335  
effect prior to the effective date of the section as presented in 2336  
this act. 2337

**Section 6.** This act is hereby declared to be an emergency 2338  
measure necessary for the immediate preservation of the public 2339  
peace, health, and safety. The reason for such necessity is that 2340  
licensure requirements are posing an undue economic burden upon 2341  
small retail food establishments, threatening the livelihood of 2342  
those employers and their employees. Therefore, this act shall go 2343  
into immediate effect. 2344