

**As Reported by the Senate Health, Human Services and Aging  
Committee**

**124th General Assembly  
Regular Session  
2001-2002**

**Sub. S. B. No. 136**

**SENATORS Wachtmann, Ryan**

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**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:**

<b>Section 1.</b> 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

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3717.111, and 3717.221 of the Revised Code be enacted to read as follows: 21  
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**Sec. 3709.02.** (A) In each general health district there shall be a board of health consisting of five members to be appointed as provided in ~~section~~ sections 3709.03 and 3709.41 of the Revised Code. The term of office of the members shall be five years from the date of appointment, except that of those first appointed one shall serve for five years, one for four years, one for three years, one for two years, and one for one year, and thereafter one shall be appointed each year. This paragraph does not apply to a combined board of health created under section 3709.07 of the Revised Code. 23  
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(B) Each member of the board shall be paid a sum not to exceed eighty dollars a day for the member's attendance at each meeting of the board. No member shall receive compensation for attendance at more than eighteen meetings in any year. 33  
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(C) Each member of the board shall receive travel expenses at rates established by the director of budget and management pursuant to section 126.31 of the Revised Code to cover the actual and necessary travel expenses incurred for travel to and from meetings that take place outside the county in which the member resides, except that any member may receive travel expenses for registration for any conference that takes place inside the county in which the member resides. 37  
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(D) A vacancy in the membership of the board shall be filled in the same manner as an original appointment and shall be for the unexpired term. When a vacancy occurs, in a position to be filled by the district advisory council 3709.03 of the Revised Code the that, the council shall hold a special meeting pursuant to section 3709.03 of the Revised Code and appoint for the purpose of appointing a member ~~in the same manner described in that section~~ 45  
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~~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

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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 110  
position on the executive committee due to holding a particular 111  
office, the individual shall fill one position on the committee 112  
and the other position shall be filled by a member selected by a 113

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

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

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

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

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

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

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

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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 204  
district, the contract shall set forth the number of members of 205  
such board, their terms of office, and the manner of appointment 206  
or election of officers. One of the members of such combined board 207

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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) For each city and general health district,  
the appointing authority of the board of health shall appoint a  
health district licensing council. The members of the council  
shall consist of one representative of each activity for which the  
board of health operates a licensing program.

Initial appointments to a health district advisory council  
shall be made not later than thirty days after the effective date  
of this section. Members shall serve for terms of five years and  
may be reappointed. Vacancies shall be filled in the manner  
provided for original appointment.

The health district licensing council shall organize by



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selecting a chair and secretary from among its members. The 239  
council shall adopt bylaws governing its meetings, the transaction 240  
of business, and voting procedures. The council shall meet at 241  
least quarterly and shall meet at other times pursuant to the call 242  
of the chair or a majority of the council's members. 243

(B) Pursuant to sections 3709.03, 3709.05, and 3709.07 of the 244  
Revised Code, the health district licensing council shall appoint 245  
one of its members to serve as a member of the board of health. 246  
The council shall appoint one of its members to serve as an 247  
alternate board of health member if for any reason the original 248  
member is required to abstain from voting on a particular issue 249  
being considered by the board of health. While serving on behalf 250  
of the original member, the alternate member has the same powers 251  
and duties as the original member. 252

**Sec. 3715.01.** (A) As used in this chapter: 253

(1) "Public health council" means the public health council 254  
established by section 3701.33 of the Revised Code. 255

(2) "Person" means an individual, partnership, corporation, 256  
or association. 257

(3) "Food" means: 258

(a) Articles used for food or drink for humans or animals; 259

(b) Chewing gum; 260

(c) Articles used for components of any such articles. 261

(4) "Drug" means: 262

(a) Articles recognized in the United States pharmacopoeia 263  
and national formulary, or any supplement to them; 264

(b) Articles intended for use in the diagnosis, cure, 265  
mitigation, treatment, or prevention of disease in humans or 266  
animals; 267

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(c) Articles, other than food, intended to affect the	268
structure or any function of the body of humans or other animals;	269
(d) Articles intended for use as a component of any of the	270
foregoing articles, other than devices or their components, parts,	271
or accessories.	272
(5) "Device," except when used in division (B)(1) of this	273
section and in division (A)(10) of section 3715.52, division (F)	274
of section 3715.60, division (A)(5) of section 3715.64, and	275
division (C) of section 3715.67 of the Revised Code, means any	276
instrument, apparatus, implement, machine, contrivance, implant,	277
in vitro reagent, or other similar or related article, including	278
any component, part, or accessory, that is any of the following:	279
(a) Recognized in the United States pharmacopoeia and	280
national formulary, or any supplement to them;	281
(b) Intended for use in the diagnosis of disease or other	282
conditions, or in the cure, mitigation, treatment, or prevention	283
of disease in humans or animals;	284
(c) Intended to affect the structure or any function of the	285
body of humans or animals, and that does not achieve any of its	286
principal intended purposes through chemical action within or on	287
the body of humans or animals and is not dependent upon being	288
metabolized for the achievement of any of its principal intended	289
purposes.	290
(6) "Cosmetic" means:	291
(a) Articles intended to be rubbed, poured, sprinkled, or	292
sprayed on, introduced into, or otherwise applied to the human	293
body or any part thereof for cleansing, beautifying, promoting	294
attractiveness, or altering the appearance;	295
(b) Articles intended for use as a component of any such	296
article, except that "cosmetic" does not include soap.	297

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(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

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or injurious substances.

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

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

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

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

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

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

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

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

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professional's office.

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

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

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

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

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

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

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

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(b) It has a water activity value greater than 0.85. 389

(c) It requires temperature control because it is in a form 390  
capable of supporting the rapid and progressive growth of 391  
infectious or toxigenic microorganisms, the growth and toxin 392  
production of clostridium botulinum, or in the case of raw shell 393  
eggs, the growth of salmonella enteritidis. 394

(20) "Cottage food production operation" means a person who, 395  
in the person's home, produces food items that are not potentially 396  
hazardous food, including bakery products, jams, jellies, candy, 397  
fruit butter, and similar products specified in rules adopted 398  
pursuant to section 3715.025 of the Revised Code. 399

(B) For the purposes of sections 3715.52 to 3715.72 of the 400  
Revised Code: 401

(1) If an article is alleged to be misbranded because the 402  
labeling is misleading, or if an advertisement is alleged to be 403  
false because it is misleading, then in determining whether the 404  
labeling or advertisement is misleading, there shall be taken into 405  
account, among other things, not only representations made or 406  
suggested by statement, word, design, device, sound, or in any 407  
combination thereof, but also the extent to which the labeling or 408  
advertisement fails to reveal facts material in the light of such 409  
representations or material with respect to consequence which may 410  
result from the use of the article to which the labeling or 411  
advertisement relates under the conditions of use prescribed in 412  
the labeling or advertisement thereof or under such conditions of 413  
use as are customary or usual. 414

(2) The provisions regarding the selling of food, drugs, 415  
devices, or cosmetics include the manufacture, production, 416  
processing, packing, exposure, offer, possession, and holding of 417  
any such article for sale; and the sale, dispensing, and giving of 418  
any such article, and the supplying or applying of any such 419

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

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

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

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

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

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receives or salvages distressed food for sale or use as food. A 451  
"food processing establishment" does not include a cottage food 452  
production operation; a processor of maple syrup who boils sap 453  
when a minimum of seventy-five per cent of the sap used to produce 454  
the syrup is collected directly from trees by that processor; a 455  
processor of sorghum who processes sorghum juice when a minimum of 456  
seventy-five per cent of the sorghum juice used to produce the 457  
sorghum is extracted directly from sorghum plants by that 458  
processor; or a beekeeper who jars honey when a minimum of 459  
seventy-five per cent of the honey is from that beekeeper's own 460  
hives. 461

(B) The director of agriculture shall adopt rules in 462  
accordance with Chapter 119. of the Revised Code that establish, 463  
when otherwise not established by the Revised Code, standards and 464  
good manufacturing practices for wholesale food processing 465  
establishments, including the facilities of wholesale food 466  
processing establishments and their sanitation. The rules shall 467  
conform with or be equivalent to the standards for foods 468  
established by the United States food and drug administration in 469  
Title 21 of the Code of Federal Regulations. 470

A business or that portion of a business that is regulated by 471  
the department of agriculture under Chapter 917. or 918. of the 472  
Revised Code is not subject to regulation under this section as a 473  
wholesale food processing establishment. 474

**Sec. 3715.022.** All food products, including those produced 475  
and packaged by a cottage food production operation, and all 476  
packaged maple syrup, sorghum, and honey, are subject to food 477  
sampling conducted by the director of agriculture, or a 478  
representative the director authorizes, to determine if a food 479  
product is misbranded or adulterated. A component of the food 480  
sampling conducted under this section may include the performance 481  
of sample analyses in accordance with section 3715.02 of the 482



Revised Code.

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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.

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**Sec. 3715.023.** (A) Except as provided in division (B) of this section, 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:

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

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(2) The name of the food product;

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

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

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

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(B) The requirements of division (A) of this section 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.

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

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Chapter 3717. of the Revised Code may offer for sale or use in 512  
preparing and serving food. 513

**Sec. 3715.024.** (A) A maple syrup or sorghum processor and 514  
beekeeper described in division (A) of section 3715.021 of the 515  
Revised Code may request that the director of agriculture conduct 516  
a voluntary inspection of the processor's or beekeeper's 517  
facilities. After the inspection is completed, if the inspector 518  
determines that the facilities comply with the rules adopted by 519  
the director pursuant to division (B) of this section, the 520  
processor or beekeeper may place on the label required under 521  
section 3715.023 of the Revised Code a seal of conformity and 522  
inspection of the department of agriculture. 523

(B) The director shall adopt rules in accordance with Chapter 524  
119. of the Revised Code that establish the following: 525

(1) Standards that maple syrup or sorghum processors and 526  
beekeepers must satisfy in order to be permitted to place on the 527  
label of their food products a seal of conformity and inspection 528  
of the director, as described in division (A) of this section; 529

(2) The seal of conformity and inspection to be used for 530  
purposes described in division (A) of this section. 531

**Sec. 3715.025.** (A) A cottage food production operation shall 532  
not process acidified foods, low acid canned foods, or potentially 533  
hazardous foods. 534

(B) The director of agriculture shall adopt rules in 535  
accordance with Chapter 119. of the Revised Code specifying the 536  
food items a cottage food production operation may produce that 537  
are in addition to the food items identified by name in division 538  
(A)(20) of section 3715.01 of the Revised Code. The director shall 539  
not adopt rules that permit a cottage food production operation to 540  
produce any food that is a potentially hazardous food. 541

542

**Sec. 3715.59.** Food is adulterated within the meaning of 543  
sections 3715.01, 3715.02, 3715.022, and 3715.52 to 3715.72 of the 544  
Revised Code, if any of the following apply: 545

(A) It bears or contains any poisonous or deleterious 546  
substance that may render it injurious to health; but in case the 547  
substance is not an added substance, the food shall not be 548  
considered adulterated if the quantity of the substance in the 549  
food does not ordinarily render it injurious to health. 550

(B) It bears or contains any added poisonous or added 551  
deleterious substance that is unsafe within the meaning of section 552  
3715.62 of the Revised Code. 553

(C) It consists in whole or in part of a diseased, 554  
contaminated, filthy, putrid, or decomposed substance, or if it is 555  
otherwise unfit for food. 556

(D) It has been produced, processed, prepared, packed, or 557  
held under unsanitary conditions whereby it may have become 558  
contaminated with filth, or whereby it may have been rendered 559  
diseased, unwholesome, or injurious to health. 560

(E) It is the product of a diseased animal or an animal that 561  
has died otherwise than by slaughter, or an animal that has been 562  
fed upon the uncooked offal from a slaughterhouse. 563

(F) Its container is composed, in whole or in part, of any 564  
poisonous or deleterious substance that may render the contents 565  
injurious to health. 566

(G) Any valuable constituent has been, in whole or in part, 567  
omitted or abstracted from the food. 568

(H) Any substance has been substituted wholly or in part for 569  
the food. 570

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(I) Damage or inferiority has been concealed in any manner. 571

(J) Any substance has been added to or mixed or packed with 572  
the food so as to increase its bulk or weight, reduce its quality 573  
or strength, or make it appear better or of greater value than it 574  
is. 575

(K) It is confectionery and it bears or contains any alcohol 576  
or nonnutritive article or substance other than harmless coloring, 577  
harmless flavoring, harmless resinous glaze not in excess of 578  
four-tenths of one per cent, harmless natural wax not in excess of 579  
four-tenths of one per cent, harmless natural gum, or pectin, 580  
except that this division shall not apply to any confectionery by 581  
reason of its containing less than one-half of one per cent by 582  
volume of alcohol derived solely from the use of flavoring 583  
extracts, or to any chewing gum by reason of its containing 584  
harmless nonnutritive masticatory substances. 585

(L) It bears or contains a coal-tar color other than one from 586  
a batch certified under authority of the "Federal Food, Drug, and 587  
Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended. 588  
589

(M) It has been processed in violation of section 3715.025 of 590  
the Revised Code. 591

**Sec. 3715.60.** Food is misbranded within the meaning of 592  
sections 3715.01, 3715.02, 3715.022, and 3715.52 to 3715.72 of the 593  
Revised Code, if: 594

(A) Its labeling is false or misleading in any particular. 595

(B) It is offered for sale under the name of another food. 596

(C) Its container is so made, formed, or filled as to be 597  
misleading. 598

(D) It is an imitation of another food, unless its label 599

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bears in type of uniform size and prominence, the word  
"imitation," and immediately thereafter the name of the food  
imitated.

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

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

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

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

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

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

(1) It conforms to such definition and standard.

(2) Its label bears the name of the food specified in the  
definition and standard, and, insofar as may be required by such

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statute or rules, the common names of optional ingredients, other  
than spices, flavoring, and coloring, present in such food.

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

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

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

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

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

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

(J) It purports to be or is represented to be for special  
dietary uses, unless its label bears such information concerning

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its vitamin, mineral, and other dietary properties as is provided  
by rules proposed by the director and adopted by the public health  
council, as necessary, in order to fully inform purchasers as to  
its value for such uses.

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

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

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

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

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

As used in this division:

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

(2) "Prepared" means any action that affects a food,

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including receiving and maintaining it at the temperature at which  
it was received.

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

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

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

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

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

(H) "Food delivery sales operation" means a food service  
operation from which individual portions of food are ordered by a  
customer, prepared at another food service operation or a retail



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food establishment, and delivered to the customer by a person 722  
other than an employee of the food service operation or retail 723  
food establishment that prepared the food. 724

(I) "Mobile food service operation" means a food service 725  
operation that is operated from a movable vehicle, portable 726  
structure, or watercraft and that routinely changes location, 727  
except that if the operation remains at any one location for more 728  
than forty consecutive days, the operation is no longer a mobile 729  
food service operation, ~~but is either a different type food~~ 730  
~~service operation or a retail food establishment according to the~~ 731  
~~activities being engaged in and the type of food being offered for~~ 732  
~~sale.~~ "Mobile food service operation" includes an a food service 733  
operation that does not remain at any one location for more than 734  
forty consecutive days and serves, in a manner consistent with 735  
division (F) of this section, only frozen desserts; beverages, 736  
nuts, popcorn, candy, or similar confections; bakery products 737  
identified in section 911.01 of the Revised Code; or any 738  
combination of those items. 739

(J) "Seasonal food service operation" means a food service 740  
operation, other than a mobile food service operation, that is 741  
operated for not more than six months in a licensing period. 742

(K) "Temporary food service operation" means a food service 743  
operation that is operated at an event for not more than five 744  
consecutive days, except when operated for more than five 745  
consecutive days pursuant to division (E)(2) of section 3717.43 of 746  
the Revised Code. 747

(L) "Vending machine location" means an area or room where 748  
one or more vending machines are installed and operated, except 749  
that if the machines within an area are separated by more than one 750  
hundred fifty feet, each area separated by that distance 751  
constitutes a separate vending machine location. As used in this 752  
division, "vending machine" means a self-service device that 753

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automatically dispenses on the insertion of currency, tokens, or  
similar means a predetermined unit serving of food, either in bulk  
or in package, without having to be replenished after each use.

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

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

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

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

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

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

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

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

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

(S) "Cottage food production operation" has the same meaning

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as in division (A)(20) of section 3715.01 of the Revised Code.

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

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

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

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

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(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;

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

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(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;

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~~+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;

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~~+6+~~(8) Making recommendations to the director of health with

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respect to the program for certification of individuals in food 814  
protection and approval of courses in food protection. 815

(B) The council shall hold a meeting at the request of the 816  
director of agriculture, at the request of the director of health, 817  
or on written request of three or more voting members of the 818  
council. 819

(C) In fulfilling its duties under division (A)(4) of this 820  
section, the council shall accept comments and requests regardless 821  
of whether they are made publicly or anonymously. For purposes of 822  
accepting comments and requests at times other than council 823  
meetings, the council shall maintain and publicize a mailing 824  
address. 825

**Sec. 3717.041.** To assist in the uniform application of the 826  
rules adopted under this chapter, the director of agriculture, 827  
public health council, and director of health shall jointly issue 828  
a letter of opinion when issuance of a letter of opinion is 829  
recommended by the retail food safety advisory council under 830  
section 3717.03 of the Revised Code. A letter of opinion shall be 831  
issued not later than sixty days after the date the recommendation 832  
is received from the council. 833

Each letter of opinion shall provide a detailed 834  
interpretation of the rules that are the subject of the retail 835  
food safety advisory council's recommendation. Unless rules are 836  
adopted under this chapter that override the interpretation 837  
expressed in a letter of opinion, the interpretation shall be 838  
binding and applied uniformly throughout this state. 839

**Sec. 3717.05.** (A) The director of agriculture and the public 840  
health council shall adopt rules establishing standards for safe 841  
food handling and sanitation in retail food establishments and 842  
food service operations. The rules shall be compiled as the Ohio 843

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uniform food safety code, which shall be used by the licensors of 844  
retail food establishments and food ~~services~~ service operations in 845  
ensuring the safe handling of food in this state. All scientific 846  
provisions of the Ohio uniform food safety code that are relevant 847  
to both retail food establishments and food service operations 848  
shall be adopted by the director of agriculture and the public 849  
health council with each other's concurrence. 850

The Ohio uniform food safety code shall include the 851  
following: 852

(1) Criteria for sanitation in retail food establishments and 853  
food service operations; 854

(2) Criteria for equipment in retail food establishments and 855  
food service operations; 856

(3) Criteria for reviewing the facility layout and equipment 857  
specifications of retail food establishments and food service 858  
operations; 859

(4) A definition of "potentially hazardous" as it pertains to 860  
food in retail food establishments and to food in food service 861  
operations; 862

(5) Criteria to be used in evaluating the primary business of 863  
a person or government entity for purposes of determining whether 864  
the person or entity should be licensed as a retail food 865  
establishment or food service operation. 866

(B)(1) Except as provided in division (B)(2) of this section, 867  
if a model food code is established by the United States food and 868  
drug administration, the Ohio uniform food safety code shall be 869  
based on the most current version of the food and drug 870  
administration's model food code. If the food and drug 871  
administration adopts, modifies, or rescinds a provision in the 872  
model food code, not later than ~~nine~~ twelve months after the 873  
administration's action, the director of agriculture and public 874

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health council shall adopt, amend, or rescind provisions in the 875  
Ohio uniform food safety code to ensure that it continues to 876  
conform with the model food code. 877

(2) The Ohio uniform food safety code may contain or omit 878  
provisions that do not correspond to the food and drug 879  
administration's model food code if the director of agriculture or 880  
the public health council, with each other's concurrence, 881  
determines either of the following: 882

(a) That rules can be adopted under this chapter that provide 883  
protection at least as effective as that which would be provided 884  
by basing the rules on the model food code; 885

(b) That local conditions warrant the adoption of standards 886  
that are different from the model food code. 887

**Sec. 3717.07.** (A) For purposes of establishing a licensing 888  
fee under sections 3717.25 and 3717.45 of the Revised Code, the 889  
director of agriculture and the public health council shall adopt 890  
rules establishing uniform methodologies for use in calculating 891  
the costs of licensing retail food establishments in the 892  
categories specified by the director and the costs of licensing 893  
food service operations in the categories specified by the 894  
council. In adopting the rules, the director of agriculture and 895  
the public health council shall consider any recommendations 896  
received from advisory boards or other entities representing the 897  
interests of retail food establishments and food service 898  
operations. 899

(B) The rules shall include provisions that do all of the 900  
following: 901

(1) Provide for calculations to be made according to fiscal 902  
years rather than licensing periods; 903

(2) Limit the direct costs that may be attributed to the use 904

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

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

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

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

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

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

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

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

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

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

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

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



late;

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

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

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

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

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

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

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

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

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

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

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

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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.

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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.

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(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.

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(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,

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

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

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

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

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

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

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be licensed as a retail food establishment: 1122

(1) An ~~operation~~ establishment with commercially prepackaged 1123  
foods that are not potentially hazardous and contained in 1124  
displays, the total space of which equals less than one hundred 1125  
cubic feet; 1126

(2) A ~~storage facility of less than five hundred square feet~~ 1127  
~~containing prepackaged foods that are not potentially hazardous;~~ 1128  
person at a farmers market that is registered with the director of 1129  
agriculture pursuant to section 3717.221 of the Revised Code that 1130  
offers for sale only one or more of the following: 1131

(a) Fresh unprocessed fruits or vegetables; 1132

(b) Products of a cottage food production operation; 1133

(c) Maple syrup, sorghum, or honey that is produced by a 1134  
maple syrup or sorghum producer or beekeeper described in division 1135  
(A) of section 3715.021 of the Revised Code; 1136

(d) Commercially prepackaged food that is not potentially 1137  
hazardous, on the condition that the food is contained in 1138  
displays, the total space of which equals less than one hundred 1139  
cubic feet on the premises where the person conducts business at 1140  
the farmers market. 1141

(3) A ~~roadside market that~~ person who offers for sale at a 1142  
roadside stand only fresh fruits and fresh vegetables that are 1143  
unprocessed; 1144

(4) A nonprofit organization exempt from federal income 1145  
taxation under section 501(c)(3) of the "Internal Revenue Code of 1146  
1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, that raises 1147  
funds by selling ~~displayed foods, if the~~ foods that are not 1148  
potentially hazardous ~~and the display is made~~ for not more than 1149  
seven consecutive days or more than fifty-two separate days during 1150  
a licensing period. This exemption extends to any individual or 1151

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group raising all of its funds during the ~~display~~ time periods 1152  
specified in division (B)(4) of this section for the benefit of 1153  
the nonprofit organization by selling ~~displayed~~ foods under the 1154  
same conditions. 1155

(5) An establishment that offers food contained in displays 1156  
of less than five hundred square feet, and if required to be 1157  
licensed would be classified as risk level one pursuant to rules 1158  
establishing licensing categories for retail food establishments 1159  
adopted under section 3717.33 of the Revised Code, on the 1160  
condition that the establishment offers the food for sale at 1161  
retail not more than six months in each calendar year; 1162

(6) A cottage food production operation, on the condition 1163  
that the operation offers its products directly to the consumer 1164  
from the site where the products are produced; 1165

(7) A maple syrup and sorghum processor and beekeeper 1166  
described in division (A) of section 3715.021 of the Revised Code, 1167  
on the condition that the processor or beekeeper offers only maple 1168  
syrup, sorghum, or honey directly to the consumer from the site 1169  
where those products are processed; 1170

(8) A person who annually maintains five hundred or fewer 1171  
birds, on the condition that the person offers the eggs from those 1172  
birds directly to the consumer from the location where the eggs 1173  
are produced or at a farm product auction to which division 1174  
(B)(11) of this section applies; 1175

(9) A person who annually raises and slaughters one thousand 1176  
or fewer chickens, on the condition that the person offers dressed 1177  
chickens directly to the consumer from the location where the 1178  
chickens are raised and slaughtered or at a farm product auction 1179  
to which division (B)(11) of this section applies; 1180

(10) A person who raises, slaughters, and processes the meat 1181  
of nonamenable species described in divisions (A) and (B) of 1182

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section 918.12 of the Revised Code, on the condition that the 1183  
person offers the meat directly to the consumer from the location 1184  
where the meat is processed or at a farm product auction to which 1185  
division (B)(11) of this section applies; 1186

(11) A farm product auction, on the condition that it is 1187  
registered with the director pursuant to section 3717.221 of the 1188  
Revised Code that offers for sale at the farm product auction only 1189  
one or more of the following: 1190

(a) The products described in divisions (B)(8) to (10) of 1191  
this section that are produced, raised, slaughtered, or processed, 1192  
as appropriate, by persons described in divisions (B)(8) to (10) 1193  
of this section; 1194

(b) Fresh unprocessed fruits or vegetables; 1195

(c) Products of a cottage food production operation; 1196

(d) Maple syrup, sorghum, or honey that is produced by a 1197  
maple syrup or sorghum producer or beekeeper described in division 1198  
(A) of section 3715.021 of the Revised Code. 1199

(12) Establishments that, with respect to offering food for 1200  
sale, offer only alcoholic beverages or prepackaged beverages that 1201  
are not potentially hazardous; 1202

(13) Establishments that, with respect to offering food for 1203  
sale, offer only alcoholic beverages, prepackaged beverages that 1204  
are not potentially hazardous, or commercially prepackaged food 1205  
that is not potentially hazardous, on the condition that the 1206  
commercially prepackaged food is contained in displays, the total 1207  
space of which equals less than one hundred cubic feet on the 1208  
premises of the operation; 1209

(14) Establishments that, with respect to offering food for 1210  
sale, offer only fountain beverages that are not potentially 1211  
hazardous; 1212



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(15) A person who offers for sale only one or more of the 1213  
following foods at a festival or celebration, on the condition 1214  
that the festival or celebration is organized by a political 1215  
subdivision of the state and lasts for a period not longer than 1216  
seven consecutive days: 1217

(a) Fresh unprocessed fruits or vegetables; 1218

(b) Products of a cottage food production operation; 1219

(c) Maple syrup, sorghum, or honey if produced by a maple 1220  
syrup or sorghum processor or beekeeper as described in division 1221  
(A) of section 3715.021 of the Revised Code; 1222

(d) Commercially prepackaged food that is not potentially 1223  
hazardous, on the condition that the food is contained in 1224  
displays, the total space of which equals less than one hundred 1225  
cubic feet; 1226

(e) Fruit butter produced at the festival or celebration and 1227  
sold from the production site. 1228

(16) A farm market on the condition that it is registered 1229  
with the director pursuant to section 3717.221 of the Revised Code 1230  
that offers for sale at the farm market only one or more of the 1231  
following: 1232

(a) Fresh unprocessed fruits or vegetables; 1233

(b) Products of a cottage food production operation; 1234

(c) Maple syrup, sorghum, or honey that is produced by a 1235  
maple syrup or sorghum producer or beekeeper described in division 1236  
(A) of section 3715.021 of the Revised Code; 1237

(d) Commercially prepackaged food that is not potentially 1238  
hazardous, on the condition that the food is contained in 1239  
displays, the total space of which equals less than one hundred 1240  
cubic feet on the premises where the person conducts business at 1241  
the farm market; 1242

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(e) Cider and other juices manufactured on site at the farm 1243  
market; 1244

(f) The products or items described in divisions (B)(8) to 1245  
(10) of this section, on the condition that those products or 1246  
items were produced by the person offering to sell them, and 1247  
further conditioned that, with respect to eggs offered, the person 1248  
offering to sell them annually maintains five hundred or fewer 1249  
birds, and with respect to dressed chickens offered, the person 1250  
annually raises and slaughters one thousand or fewer chickens. 1251

**Sec. 3717.221.** (A) Any of the following may register with the 1252  
director of agriculture: 1253

(1) A farm market, which is a location where a producer 1254  
offers fruits, vegetables, and other items for sale; 1255

(2) A farmers market, which is a location where producers 1256  
congregate to offer fruits, vegetables, and other items for sale; 1257

(3) A farm product auction, which is a location where 1258  
agricultural products, including food products, are offered for 1259  
sale at auction. 1260

(B) The director shall inspect each farm market, farmers 1261  
market, and farm product auction that registers under this 1262  
section. Inspections shall occur at a frequency considered 1263  
appropriate by the director and shall be conducted in accordance 1264  
with sanitation standards established in rules adopted under this 1265  
section. 1266

(C) The director shall adopt rules in accordance with Chapter 1267  
119. of the Revised Code as necessary to administer this section. 1268  
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**Sec. 3717.23.** (A) Each person or government entity seeking a 1270  
retail food establishment license or the renewal of a license 1271

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shall apply to the appropriate licensor on a form provided by the 1272  
licensor. A licensor shall use a form prescribed and furnished to 1273  
the licensor by the director of agriculture or a form prescribed 1274  
by the licensor that has been approved by the director. The 1275  
applicant shall include with the application all information 1276  
necessary for the licensor to process the application, as 1277  
requested by the licensor. 1278

An application for a retail food establishment license, other 1279  
than an application for a mobile retail food establishment 1280  
license, shall be submitted to the licensor for the health 1281  
district in which the retail food establishment is located. An 1282  
application for a mobile retail food establishment license shall 1283  
be submitted to the licensor for the health district in which the 1284  
applicant's business headquarters are located, or, if the 1285  
headquarters are located outside this state, to the licensor for 1286  
the district where the applicant will first operate in this state. 1287

(B) The licensor shall review all applications received. The 1288  
licensor shall issue a license for a new retail food establishment 1289  
when the applicant submits a complete application and the licensor 1290  
determines that the applicant meets all other requirements of this 1291  
chapter and the rules adopted under it for receiving the license. 1292  
The licensor shall issue a renewed license on receipt of a 1293  
complete renewal application. 1294

The licensor shall issue licenses for retail food 1295  
establishments on forms prescribed and furnished by the director 1296  
of agriculture. If the license is for a mobile retail food 1297  
establishment, the licensor shall post the establishment's layout, 1298  
equipment, and items to be sold on the back of the license. 1299

A mobile retail food establishment license issued by one 1300  
licensor shall be recognized by all other licensors in this state. 1301

(C)(1) A retail food establishment license expires at the end 1302  
of the licensing period for which the license is issued, except as 1303

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follows:

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

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

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

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

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

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

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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 1365  
renewing retail food establishment licenses. Any licensing fee 1366  
charged shall be used solely for the administration and 1367  
enforcement of the provisions of this chapter and the rules 1368  
adopted under it applicable to retail food establishments. 1369

Any licensing fee charged under this section shall be based 1370  
on the licensor's costs of regulating retail food establishments, 1371  
as determined according to the uniform methodologies established 1372  
under section 3717.07 of the Revised Code. If the licensor is a 1373  
board of health, a fee may be disapproved by the district advisory 1374  
council in the case of a general health district or the 1375  
legislative authority of the city in the case of a city health 1376  
district. A disapproved fee shall not be charged by the board of 1377  
health. 1378

At least thirty days prior to establishing a licensing fee, 1379  
the licensor shall hold a public hearing regarding the proposed 1380  
fee. At least thirty days prior to the public hearing, the 1381  
licensor shall give written notice of the hearing to each person 1382  
or government entity holding a retail food establishment license 1383  
that may be affected by the proposed fee. The notice shall be 1384  
mailed to the last known address of the licensee and shall specify 1385  
the date, time, and place of the hearing and the amount of the 1386  
proposed fee. On request, the licensor shall provide the completed 1387  
uniform methodology used in the calculation of the licensor's 1388  
costs and the proposed fee. 1389

(B) In addition to licensing fees, a licensor may charge fees 1390  
for any of the following: 1391

(1) Review of facility layout and equipment specifications 1392  
pertaining to retail food establishments, other than mobile and 1393  
temporary retail food establishments; 1394

(2) Any necessary collection and bacteriological examination 1395

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of samples from retail food establishments or similar services 1396  
specified in rules adopted under this chapter by the director of 1397  
agriculture; 1398

(3) Attendance at a course of study offered by the licensor 1399  
in food protection as it pertains to retail food establishments, 1400  
if the course is approved under section 3717.09 of the Revised 1401  
Code. 1402

(C) The director may determine by rule an amount to be 1403  
collected from applicants for retail food establishment licenses 1404  
for use by the director in administering and enforcing the 1405  
provisions of this chapter and the rules adopted under it 1406  
applicable to retail food establishments. Licensors shall collect 1407  
the amount prior to issuing an applicant's new or renewed license. 1408  
If a licensing fee is charged under this section, the licensor 1409  
shall collect the amount at the same time the fee is collected. 1410  
Licensors are not required to provide notice or hold public 1411  
hearings regarding amounts collected under this division. 1412

Not later than sixty days after the last day of the month in 1413  
which a license is issued, the licensor shall certify the amount 1414  
collected under this division and transmit the amount to the 1415  
treasurer of state. All amounts received shall be deposited into 1416  
the food safety fund created in section 915.24 of the Revised 1417  
Code. The director shall use the amounts solely for the 1418  
administration and enforcement of the provisions of this chapter 1419  
and the rules adopted under it applicable to retail food 1420  
establishments. 1421

When adopting rules regarding the amounts collected under 1422  
this division, the director shall make available during the rule 1423  
making process the current and projected expenses of administering 1424  
and enforcing the provisions of this chapter and the rules adopted 1425  
under it applicable to retail food establishments and the total of 1426  
all amounts that have been deposited in the food safety fund 1427

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pursuant to this division.

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**Sec. 3717.27.** (A) All inspections of retail food establishments conducted by a licensor under this chapter shall be conducted according to the procedures and schedule of frequency specified in rules adopted under section 3717.33 of the Revised Code. An inspection may be 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 licensor. With the assistance of the director, a board acting as licensor, to the extent practicable, shall computerize the inspection process and standardize the manner in which its inspections are conducted.

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

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

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(C) An inspection may include the following: 1459

(1) An investigation to determine the identity and source of 1460  
a particular food; 1461

(2) Removal from use of any equipment, utensils, hand tools, 1462  
or parts of facilities found to be maintained in a condition that 1463  
presents a clear and present danger to the public health. 1464

**Sec. 3717.29.** (A) This section applies when the licensor of 1465  
retail food establishments is a board of health. 1466

(B) A board of health may suspend or revoke a retail food 1467  
establishment license on determining that the license holder is in 1468  
violation of any requirement of this chapter or the rules adopted 1469  
under it applicable to retail food establishments, including a 1470  
violation evidenced by documented failure to maintain sanitary 1471  
conditions within the establishment. 1472

(C)(1) Except in the case of a violation that presents a 1473  
clear and present danger to the public health, before initiating 1474  
action to suspend or revoke a retail food establishment license, 1475  
the board shall give the license holder written notice specifying 1476  
each violation and a reasonable time within which the license 1477  
holder must correct each violation to avoid suspension or 1478  
revocation of the license. The board may extend the time specified 1479  
in the notice for correcting a violation if the license holder is 1480  
making a good faith effort to correct it. 1481

If the license holder fails to correct the violation in the 1482  
time granted by the board, the board may initiate action to 1483  
suspend or revoke the retail food establishment license by giving 1484  
the license holder written notice of the proposed suspension or 1485  
revocation. The board shall include in the notice a description of 1486  
the procedure for appealing the proposed suspension or revocation. 1487  
The license holder may appeal the proposed suspension or 1488

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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

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operating a mobile retail food establishment, either the licensor 1520  
that issued the license or the licensor for the health district in 1521  
which the establishment is being operated may suspend the license. 1522

A suspension under division (D)(1) of this section takes 1523  
effect immediately and remains in effect until the board rescinds 1524  
the suspension. When a mobile retail food establishment license is 1525  
suspended under this division, the licensor that suspended the 1526  
license shall hold the license until the suspension is lifted and 1527  
the licensor receives from the license holder written notice of 1528  
the next location at which the license holder proposes to operate 1529  
the retail food establishment. 1530

After suspending a license under division (D)(1) of this 1531  
section, the licensor shall give the license holder written notice 1532  
of the procedure for appealing the suspension. The license holder 1533  
may appeal the suspension by giving written notice to the board 1534  
and specifying in the notice whether a hearing is requested. The 1535  
appeal shall be conducted in accordance with division (D)(2) of 1536  
this section. 1537

A health commissioner, if authorized by the board to take the 1538  
action, may take any action that may be taken by the board under 1539  
division (D)(1) of this section. A health commissioner who 1540  
suspends a license under this authority, on determining that there 1541  
is no longer a clear and present danger to the public health, may 1542  
rescind the suspension without consulting the board. 1543

(2) If the license holder appeals a suspension under division 1544  
(D)(1) of this section, the board shall determine whether the 1545  
clear and present danger to the public health continues to exist 1546  
by majority vote of the board members who are present at a meeting 1547  
at which there is a quorum. 1548

If the board determines that there is no longer a clear and 1549  
present danger to the public health, the board shall rescind the 1550  
suspension. If the board determines that the clear and present 1551

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

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

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

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

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

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

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

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under Chapter 911., 913., 915., 917., 918., or 925. of the Revised Code. 1582  
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(B) All of the following are exempt from the requirement to be licensed as a food service operation: 1584  
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(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; 1586  
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(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; 1590  
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(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; 1595  
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(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; 1598  
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(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 1604  
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- individual portion service under the same conditions. 1613
- (6) A common carrier that prepares or serves food, if the 1614  
carrier is regulated by the federal government; 1615
- (7) A food service operation serving five or fewer 1616  
individuals daily; 1617
- (8) A type A or type B family day-care home, as defined in 1618  
section 5104.01 of the Revised Code, that prepares or serves food 1619  
for the children receiving day-care; 1620
- (9) A vending machine location where the only foods dispensed 1621  
are foods from one or both of the following categories: 1622
- (a) Prepackaged foods that are not potentially hazardous; 1623
- (b) Nuts, panned or wrapped bulk chewing gum, or panned or 1624  
wrapped bulk candies. 1625
- (10) A place servicing the vending machines at a vending 1626  
machine location described in division (B)(9) of this section; 1627
- (11) A commissary servicing vending machines that dispense 1628  
only milk, milk products, or frozen desserts that are under a 1629  
state or federal inspection and analysis program; 1630
- (12) A "controlled location vending machine location," which 1631  
means a vending machine location at which all of the following 1632  
apply: 1633
- (a) The vending machines dispense only foods that are not 1634  
potentially hazardous; 1635
- (b) The machines are designed to be filled and maintained in 1636  
a sanitary manner by untrained persons; 1637
- (c) Minimal protection is necessary to ensure against 1638  
contamination of food and equipment. 1639
- (13) A private home that prepares and offers food to guests, 1640  
if the home is owner-occupied, meals are served on the premises of 1641

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that home, and the number of meals served does not exceed one  
hundred fifteen per week.

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

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

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

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The licensor shall issue licenses for food service operations 1673  
on forms prescribed and furnished by the director of health. If 1674  
the license is for a mobile food service operation, the licensor 1675  
shall post the operation's layout, equipment, and menu on the back 1676  
of the license. 1677

A mobile or catering food service operation license issued by 1678  
one licensor shall be recognized by all other licensors in this 1679  
state. 1680

(C)(1) A food service operation license expires at the end of 1681  
the licensing period for which the license is issued, except as 1682  
follows: 1683

(a) A license issued to a new food service operation after 1684  
the first day of December shall not expire until the end of the 1685  
licensing period next succeeding issuance of the license. 1686

(b) A temporary food service operation license expires at the 1687  
end of the period for which it is issued. 1688

(2) All food service operation licenses remain valid until 1689  
they are scheduled to expire unless earlier suspended or revoked 1690  
under section 3717.49 of the Revised Code. 1691

(D) A food service operation license may be renewed, except 1692  
that a temporary food service operation license is not renewable. 1693  
~~Applications A person or government entity seeking license renewal~~ 1694  
~~shall submit an application for renewal of food service operation~~ 1695  
~~licenses other than those for mobile and seasonal food service~~ 1696  
~~operation licenses shall be submitted~~ to the licensor not later 1697  
than the first day of March. ~~Renewal applications for, except that~~ 1698  
~~in the case of a mobile and or seasonal food service operation~~ 1699  
~~licenses the renewal application~~ shall be submitted ~~prior to~~ 1700  
~~before~~ commencing operation in a new licensing period. A licensor 1701  
may renew a license prior to the first day of March or the first 1702  
day of operation in a new licensing period, but not before the 1703



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first day of February immediately preceding the licensing period 1704  
for which the license is being renewed. 1705

If a renewal application is not filed with the licensor or 1706  
postmarked on or before the first day of March or, in the case of 1707  
a mobile or seasonal food service operation, the first day of 1708  
operation in a new licensing period, the licensor shall assess a 1709  
penalty ~~of~~. The amount of the penalty shall be the lesser of fifty 1710  
dollars or twenty-five per cent of the fee charged for renewing 1711  
licenses, if the licensor charges renewal fees. If an applicant is 1712  
subject to a penalty, the licensor shall not renew the license 1713  
until the applicant pays the penalty. 1714

(E)(1) A licensor may issue not more than ten temporary food 1715  
service operation licenses per licensing period to the same person 1716  
or government entity to operate at different events within the 1717  
licensor's jurisdiction. For each particular event, a licensor may 1718  
issue only one temporary food service operation license to the 1719  
same person or government entity. 1720

(2) A licensor may issue a temporary food service operation 1721  
license to operate for more than five consecutive days if both of 1722  
the following apply: 1723

(a) The operation will be operated at an event organized by a 1724  
county agricultural society or independent agricultural society 1725  
organized under Chapter 1711. of the Revised Code; 1726

(b) The person who will receive the license is a resident of 1727  
the county or one of the counties for which the agricultural 1728  
society was organized. 1729

(3) A person may be granted only one temporary food service 1730  
operation license per licensing period pursuant to division (E)(2) 1731  
of this section. 1732

(F) The licensor may place restrictions or conditions on a 1733  
food service operation license limiting the types of food that may 1734

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be prepared or served by the food service operation based on the  
equipment or facilities of the food service operation. Limitations  
pertaining to a mobile or catering food service operation shall be  
posted on the back of the license.

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

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

**Sec. 4303.021.** Permit A-1-A may be issued to the holder of an  
A-1 or A-2 permit to sell beer and any intoxicating liquor at  
retail, only by the individual drink in glass or from a container,  
provided such A-1-A permit premises are situated on the same  
parcel or tract of land as the related A-1 or A-2 manufacturing  
permit premises or are separated therefrom only by public streets  
or highways or by other lands owned by the holder of the A-1 or  
A-2 permit and used by the holder in connection with or in  
promotion of the holder's A-1 or A-2 permit business. The fee for  
this permit is three thousand one hundred twenty-five dollars. The  
holder of an A-1-A permit may sell beer and any intoxicating  
liquor during the same hours as the holders of D-5 permits under  
this chapter or Chapter 4301. of the Revised Code or the rules of  
the liquor control commission and shall obtain a ~~restaurant~~  
license as a retail food establishment or a food service operation  
pursuant to ~~section 3717.43~~ Chapter 3717. of the Revised Code and  
operate as a restaurant for purposes of this chapter.

Except as otherwise provided in this section, no new A-1-A

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permit shall be issued to the holder of an A-1 or A-2 permit 1766  
unless the sale of beer and intoxicating liquor under class D 1767  
permits is permitted in the precinct in which the A-1 or A-2 1768  
permit is located and, in the case of an A-2 permit, unless the 1769  
holder of the A-2 permit manufactures or has a storage capacity of 1770  
at least twenty-five thousand gallons of wine per year. The 1771  
immediately preceding sentence does not prohibit the issuance of 1772  
an A-1-A permit to an applicant for such a permit who is the 1773  
holder of an A-1 permit and whose application was filed with the 1774  
division of liquor control before June 1, 1994. The liquor control 1775  
commission shall not restrict the number of A-1-A permits which 1776  
may be located within a precinct. 1777

**Sec. 4303.13.** Permit D-1 may be issued to the owner or 1778  
operator of a hotel or ~~restaurant~~ of a retail food establishment 1779  
or a food service operation licensed pursuant to ~~section 3717.43~~ 1780  
Chapter 3717. of the Revised Code that operates as a restaurant 1781  
for purposes of this chapter, or of a club, amusement park, 1782  
drugstore, lunch stand, boat, or vessel, and shall be issued to a 1783  
person described in division (B) of this section, to sell beer at 1784  
retail either in glass or container, for consumption on the 1785  
premises where sold; and, except as otherwise provided in division 1786  
(B) of this section, to sell beer at retail in other receptacles 1787  
or in original containers having a capacity of not more than five 1788  
and one-sixth gallons not for consumption on the premises where 1789  
sold. The fee for this permit is one hundred eighty-eight dollars 1790  
for each location, boat, or vessel. 1791

**Sec. 4303.14.** Permit D-2 may be issued to the owner or 1792  
operator of a hotel or ~~restaurant~~ of a retail food establishment 1793  
or a food service operation licensed pursuant to ~~section 3717.43~~ 1794  
Chapter 3717. of the Revised Code that operates as a restaurant 1795  
for purposes of this chapter, or of a club, boat, or vessel, to 1796

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sell wine and prepared and bottled cocktails, cordials, and other 1797  
mixed beverages manufactured and distributed by holders of A-4 and 1798  
B-4 permits at retail, either in glass or container, for 1799  
consumption on the premises where sold. The holder of such permit 1800  
may also sell wine and prepared and bottled cocktails, cordials, 1801  
and other mixed beverages in original packages and not for 1802  
consumption on the premises where sold or for resale. The fee for 1803  
this permit is two hundred eighty-two dollars for each location, 1804  
boat, or vessel. 1805

**Sec. 4303.15.** Permit D-3 may be issued to the owner or 1806  
operator of a hotel or ~~restaurant~~ of a retail food establishment 1807  
or a food service operation licensed pursuant to ~~section 3717.43~~ 1808  
Chapter 3717. of the Revised Code that operates as a restaurant 1809  
for purposes of this chapter, or of a club, boat, or vessel, to 1810  
sell spirituous liquor at retail, only by the individual drink in 1811  
glass or from the container, for consumption on the premises where 1812  
sold. No sales of intoxicating liquor shall be made by a holder of 1813  
a D-3 permit after one a.m. The fee for this permit is six hundred 1814  
dollars for each location, boat, or vessel. 1815

**Sec. 4303.18.** Permit D-5 may be issued to the owner or 1816  
operator of a retail food establishment or a food service 1817  
operation licensed pursuant to Chapter 3717. of the Revised Code 1818  
that operates as a restaurant or night club for purposes of this 1819  
chapter, to sell beer and any intoxicating liquor at retail, only 1820  
by the individual drink in glass and from the container, for 1821  
consumption on the premises where sold, and to sell the same 1822  
products in the same manner and amounts not for consumption on the 1823  
premises as may be sold by holders of D-1 and D-2 permits. A 1824  
person who is the holder of both a D-3 and D-3a permit need not 1825  
obtain a D-5 permit. The fee for this permit is one thousand eight 1826  
hundred seventy-five dollars. 1827

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

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

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A D-5a permit shall not be transferred to another location. 1860  
No quota restriction shall be placed on the number of such permits 1861  
that may be issued. 1862

The fee for this permit is one thousand eight hundred 1863  
seventy-five dollars. 1864

(B) Permit D-5b may be issued to the owner, operator, tenant, 1865  
lessee, or occupant of an enclosed shopping center to sell beer 1866  
and intoxicating liquor at retail, only by the individual drink in 1867  
glass and from the container, for consumption on the premises 1868  
where sold; and to sell the same products in the same manner and 1869  
amount not for consumption on the premises as may be sold by 1870  
holders of D-1 and D-2 permits. In addition to the privileges 1871  
authorized in this division, the holder of a D-5b permit may 1872  
exercise the same privileges as a holder of a D-5 permit. 1873

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A D-5b permit shall not be transferred to another location. 1875

One D-5b permit may be issued at an enclosed shopping center 1876  
containing at least two hundred twenty-five thousand, but less 1877  
than four hundred thousand, square feet of floor area. 1878

Two D-5b permits may be issued at an enclosed shopping center 1879  
containing at least four hundred thousand square feet of floor 1880  
area. No more than one D-5b permit may be issued at an enclosed 1881  
shopping center for each additional two hundred thousand square 1882  
feet of floor area or fraction of that floor area, up to a maximum 1883  
of five D-5b permits for each enclosed shopping center. The number 1884  
of D-5b permits that may be issued at an enclosed shopping center 1885  
shall be determined by subtracting the number of D-3 and D-5 1886  
permits issued in the enclosed shopping center from the number of 1887  
D-5b permits that otherwise may be issued at the enclosed shopping 1888  
center under the formulas provided in this division. Except as 1889  
provided in this section, no quota shall be placed on the number 1890

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of D-5b permits that may be issued. Notwithstanding any quota  
provided in this section, the holder of any D-5b permit first  
issued in accordance with this section is entitled to its renewal  
in accordance with section 4303.271 of the Revised Code.

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

The fee for this permit is one thousand eight hundred

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seventy-five dollars.

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

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

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



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that may be issued.

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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.

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

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(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.

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

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

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

(1) Is permanently docked at one location;

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

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

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

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

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

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

(F) Permit D-5f may be issued to ~~either the owner or the~~ operator of a retail food establishment or a food service operation that is licensed under section 3717.43 Chapter 3717. of the Revised Code that operates as a restaurant for purposes of

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<u>this chapter</u> and that meets all of the following:	2016
(1) It contains not less than twenty-five hundred square feet of floor area.	2017 2018
(2) It is located on or in, or immediately adjacent to, the shoreline of, a navigable river.	2019 2020
(3) It provides docking space for twenty-five boats.	2021
(4) It provides entertainment and recreation, provided that not less than fifty per cent of the business on the permit premises shall be preparing and serving meals for a consideration.	2022 2023 2024
In addition, each application for a D-5f permit shall be accompanied by a certification from the local legislative authority that the issuance of the D-5f permit is not inconsistent with that political subdivision's comprehensive development plan or other economic development goal as officially established by the local legislative authority.	2025 2026 2027 2028 2029 2030
The holder of a D-5f permit may sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold.	2031 2032 2033
A D-5f permit shall not be transferred to another location. No more than fifteen D-5f permits shall be issued by the division of liquor control, and no more than two such permits shall be issued in any county. However, the division shall not issue a D-5f permit if the permit premises or proposed permit premises are located within an area in which the sale of spirituous liquor by the glass is prohibited.	2034 2035 2036 2037 2038 2039 2040
A fee for this permit is one thousand eight hundred seventy-five dollars.	2041 2042
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.	2043 2044 2045

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

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

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

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

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(2) It has inside seating capacity for at least one hundred 2078  
forty persons. 2079

(3) It has at least four thousand square feet of floor area. 2080  
2081

(4) It offers full-course meals, appetizers, and sandwiches. 2082

(5) Its receipts from beer and liquor sales do not exceed 2083  
twenty-five per cent of its total gross receipts. 2084

(6) The value of its real and personal property exceeds seven 2085  
hundred twenty-five thousand dollars. 2086

The holder of a D-5i permit shall cause an independent audit 2087  
to be performed at the end of one full year of operation following 2088  
issuance of the permit in order to verify the requirements of 2089  
division (I)(5) of this section. The results of the independent 2090  
audit shall be transmitted to the division. Upon determining that 2091  
the receipts of the holder from beer and liquor sales exceeded 2092  
twenty-five per cent of its total gross receipts, the division 2093  
shall suspend the permit of the permit holder under section 2094  
4301.25 of the Revised Code and may allow the permit holder to 2095  
elect a forfeiture under section 4301.252 of the Revised Code. 2096

The holder of a D-5i permit may sell beer and any 2097  
intoxicating liquor at retail, only by the individual drink in 2098  
glass and from the container, for consumption on the premises 2099  
where sold, and may sell the same products in the same manner and 2100  
amounts not for consumption on the premises where sold as may be 2101  
sold by the holders of D-1 and D-2 permits. The holder of a D-5i 2102  
permit shall sell no beer or intoxicating liquor for consumption 2103  
on the premises where sold after two-thirty a.m. In addition to 2104  
the privileges authorized in this division, the holder of a D-5i 2105  
permit may exercise the same privileges as the holder of a D-5 2106  
permit. 2107

A D-5i permit shall not be transferred to another location. 2108

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

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

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

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

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

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(5) The fee for a D-5j permit is one thousand eight hundred 2141  
seventy-five dollars. 2142

**Sec. 4303.182.** (A) Except as otherwise provided in divisions 2143  
(B) to (F) of this section, permit D-6 shall be issued to the 2144  
holder of an A-1-A, A-2, C-2, D-2, D-3, D-4, D-4a, D-5, D-5a, 2145  
D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-5j, or D-7 2146  
permit to allow sale under that permit between the hours of ten 2147  
a.m. and midnight, or between the hours of one p.m. and midnight, 2148  
on Sunday, as applicable, if that sale has been authorized under 2149  
section 4301.361, 4301.364, 4301.365, or 4301.366 of the Revised 2150  
Code and under the restrictions of that authorization. 2151

(B) Permit D-6 shall be issued to the holder of any permit, 2152  
including a D-4a and D-5d permit, authorizing the sale of 2153  
intoxicating liquor issued for a premises located at any publicly 2154  
owned airport, as defined in section 4563.01 of the Revised Code, 2155  
at which commercial airline companies operate regularly scheduled 2156  
flights on which space is available to the public, to allow sale 2157  
under such permit between the hours of ten a.m. and midnight on 2158  
Sunday, whether or not that sale has been authorized under section 2159  
4301.361, 4301.364, 4301.365, or, 4301.366 of the Revised Code. 2160

(C) Permit D-6 shall be issued to the holder of a D-5a 2161  
permit, and to the holder of a D-3 or D-3a permit who is the owner 2162  
or operator of a hotel or motel that is required to be licensed 2163  
under section 3731.03 of the Revised Code, that contains at least 2164  
fifty rooms for registered transient guests, and that has on its 2165  
premises a ~~restaurant~~ retail food establishment or a food service 2166  
operation licensed pursuant to ~~section 3717.43~~ Chapter 3717. of 2167  
the Revised Code that operates as a restaurant for purposes of 2168  
this chapter and is affiliated with the hotel or motel and within 2169  
or contiguous to the hotel or motel and serving food within the 2170  
hotel or motel, to allow sale under such permit between the hours 2171

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of ten a.m. and midnight on Sunday, whether or not that sale has 2172  
been authorized under section 4301.361, 4301.364, 4301.365, or, 2173  
4301.366 of the Revised Code. 2174

(D) The holder of a D-6 permit that is issued to a sports 2175  
facility may make sales under the permit between the hours of 2176  
eleven a.m. and midnight on any Sunday on which a professional 2177  
baseball, basketball, football, hockey, or soccer game is being 2178  
played at the sports facility. As used in this division, "sports 2179  
facility" means a stadium or arena that has a seating capacity of 2180  
at least four thousand and that is owned or leased by a 2181  
professional baseball, basketball, football, hockey, or soccer 2182  
franchise or any combination of those franchises. 2183

(E) Permit D-6 shall be issued to the holder of any permit 2184  
that authorizes the sale of beer or intoxicating liquor and that 2185  
is issued to a premises located in or at the Ohio historical 2186  
society area or the state fairgrounds, as defined in division (B) 2187  
of section 4301.40 of the Revised Code, to allow sale under that 2188  
permit between the hours of ten a.m. and midnight on Sunday, 2189  
whether or not that sale has been authorized under section 2190  
4301.361, 4301.364, 4301.365, or 4301.366 of the Revised Code. 2191

(F) Permit D-6 shall be issued to the holder of any permit 2192  
that authorizes the sale of intoxicating liquor and that is issued 2193  
to an outdoor performing arts center to allow sale under that 2194  
permit between the hours of one p.m. and midnight on Sunday, 2195  
whether or not that sale has been authorized under section 2196  
4301.361 of the Revised Code. A D-6 permit issued under this 2197  
division is subject to the results of an election, held after the 2198  
D-6 permit is issued, on question (B)(4) as set forth in section 2199  
4301.351 of the Revised Code. Following the end of the period 2200  
during which an election may be held on question (B)(4) as set 2201  
forth in that section, sales of intoxicating liquor may continue 2202  
at an outdoor performing arts center under a D-6 permit issued 2203



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under this division, unless an election on that question is held 2204  
during the permitted period and a majority of the voters voting in 2205  
the precinct on that question vote "no." 2206

As used in this division, "outdoor performing arts center" 2207  
means an outdoor performing arts center that is located on not 2208  
less than eight hundred acres of land and that is open for 2209  
performances from the first day of April to the last day of 2210  
October of each year. 2211

(G) If the restriction to licensed premises where the sale of 2212  
food and other goods and services exceeds fifty per cent of the 2213  
total gross receipts of the permit holder at the premises is 2214  
applicable, the division of liquor control may accept an affidavit 2215  
from the permit holder to show the proportion of the permit 2216  
holder's gross receipts derived from the sale of food and other 2217  
goods and services. If the liquor control commission determines 2218  
that affidavit to have been false, it shall revoke the permits of 2219  
the permit holder at the premises concerned. 2220

(H) The fee for the D-6 permit is two hundred fifty dollars 2221  
when it is issued to the holder of an A-1-A, A-2, D-2, D-3, D-3a, 2222  
D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, 2223  
D-5i, D-5j, or D-7 permit. The fee for the D-6 permit is two 2224  
hundred dollars when it is issued to the holder of a C-2 permit. 2225

**Sec. 4303.183.** Permit D-7 may be issued to the holder of any 2226  
D-2 permit issued by the division of liquor control, or if there 2227  
is an insufficient number of D-2 permit holders to fill the resort 2228  
quota, to the operator of a retail food establishment or a food 2229  
service operation required to be licensed under ~~section 3717.43~~ 2230  
Chapter 3717. of the Revised Code that operates as a restaurant 2231  
for purposes of this chapter and which qualifies under the other 2232  
requirements of this section, to sell beer and any intoxicating 2233  
liquor at retail, only by the individual drink in glass and from 2234

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the container, for consumption on the premises where sold. Not 2235  
less than fifty per cent of the business on the permit premises 2236  
shall be preparing and serving meals for a consideration in order 2237  
to qualify for and continue to hold such D-7 permit. The permit 2238  
premises shall be located in a resort area. 2239

"Resort area" means a municipal corporation, township, 2240  
county, or any combination thereof, which provides entertainment, 2241  
recreation, and transient housing facilities specifically intended 2242  
to provide leisure time activities for persons other than those 2243  
whose permanent residence is within the "resort area" and who 2244  
increase the population of the "resort area" on a seasonal basis, 2245  
and which experiences seasonal peaks of employment and 2246  
governmental services as a direct result of population increase 2247  
generated by the transient, recreating public. A resort season 2248  
shall begin on the first day of May and end on the last day of 2249  
October. Notwithstanding section 4303.27 of the Revised Code, such 2250  
permits may be issued for resort seasons without regard to the 2251  
calendar year or permit year. Quota restrictions on the number of 2252  
such permits shall take into consideration the transient 2253  
population during the resort season, the custom and habits of 2254  
visitors and tourists, and the promotion of the resort and tourist 2255  
industry. The fee for this permit is three hundred seventy-five 2256  
dollars per month. 2257

Any suspension of a D-7 permit shall be satisfied during the 2258  
resort season in which such suspension becomes final. If such 2259  
suspension becomes final during the off-season, or if the period 2260  
of the suspension extends beyond the last day of October, the 2261  
suspension or remainder thereof shall be satisfied during the next 2262  
resort season. 2263

The ownership of a D-7 permit may be transferred from one 2264  
permit holder to another. The holder of a D-7 permit may file an 2265  
application to transfer such permit to a new location within the 2266

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same resort area, provided that such permit holder shall be the  
owner or operator of a retail food establishment or a food service  
operation, required to be licensed under ~~section 3717.43~~ Chapter  
3717. of the Revised Code, that operates as a restaurant for  
purposes of this chapter, at such new location.

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

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

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

**Section 5.** Section 3709.05 of the Revised Code is presented 2297  
in this act as a composite of the section as amended by both Am. 2298  
Sub. H.B. 117 and Am. Sub. H.B. 355 of the 121st General Assembly. 2299  
The General Assembly, applying the principle stated in division 2300  
(B) of section 1.52 of the Revised Code that amendments are to be 2301  
harmonized if reasonably capable of simultaneous operation, finds 2302  
that the composite is the resulting version of the section in 2303  
effect prior to the effective date of the section as presented in 2304  
this act. 2305

**Section 6.** This act is hereby declared to be an emergency 2306  
measure necessary for the immediate preservation of the public 2307  
peace, health, and safety. The reason for such necessity is that 2308  
licensure requirements are posing an undue economic burden upon 2309  
small retail food establishments, threatening the livelihood of 2310  
those employers and their employees. Therefore, this act shall go 2311  
into immediate effect. 2312