

**As Passed by the Senate**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**Am. S. B. No. 195**

**Senator Schaffer**

**Cosponsors: Senators Fedor, Maharath, Hoagland, Kunze, Antonio, Blessing,  
Brenner, Burke, Craig, Dolan, Eklund, Hackett, Huffman, S., Lehner, Manning,  
McColley, Obhof, O'Brien, Roegner, Rulli, Thomas, Williams, Wilson**

**A BILL**

To amend section 3717.22 of the Revised Code to  
revise the exemption from retail food  
establishment licensure that applies to certain  
wineries.

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

**Section 1.** That section 3717.22 of the Revised Code be  
amended to read as follows:

**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)  
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 food

processing establishment under section 3715.021 of the Revised 18  
Code; 19

(3) A business or that portion of a business that is 20  
regulated by the federal government or the department of 21  
agriculture as a food manufacturing or food processing business, 22  
including a business or that portion of a business regulated by 23  
the department of agriculture under Chapter 911., 913., 915., 24  
917., 918., or 925. of the Revised Code. 25

(B) All of the following are exempt from the requirement 26  
to be licensed as a retail food establishment: 27

(1) An establishment with commercially prepackaged foods 28  
that are not potentially hazardous and contained in displays, 29  
the total space of which equals less than two hundred cubic 30  
feet; 31

(2) A person at a farmers market that is registered with 32  
the director of agriculture pursuant to section 3717.221 of the 33  
Revised Code that offers for sale only one or more of the 34  
following: 35

(a) Fresh unprocessed fruits or vegetables; 36

(b) Products of a cottage food production operation; 37

(c) Tree syrup, sorghum, honey, apple syrup, or apple 38  
butter that is produced by a tree syrup or sorghum producer, 39  
beekeeper, or apple syrup or apple butter processor described in 40  
division (A) of section 3715.021 of the Revised Code; 41

(d) Wine as authorized under section 4303.2010 of the 42  
Revised Code; 43

(e) Commercially prepackaged food that is not potentially 44  
hazardous, on the condition that the food is contained in 45

displays, the total space of which equals less than one hundred 46  
cubic feet on the premises where the person conducts business at 47  
the farmers market. 48

(3) A person who offers for sale at a roadside stand only 49  
fresh fruits and fresh vegetables that are unprocessed; 50

(4) A nonprofit organization exempt from federal income 51  
taxation under section 501(c)(3) of the "Internal Revenue Code 52  
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, that raises 53  
funds by selling foods and that, if required to be licensed, 54  
would be classified as risk level one in accordance with rules 55  
establishing licensing categories for retail food establishments 56  
adopted under section 3717.33 of the Revised Code, if the sales 57  
occur inside a building and are for not more than seven 58  
consecutive days or more than fifty-two separate days during a 59  
licensing period. This exemption extends to any individual or 60  
group raising all of its funds during the time periods specified 61  
in division (B)(4) of this section for the benefit of the 62  
nonprofit organization by selling foods under the same 63  
conditions. 64

(5) An establishment that offers food contained in 65  
displays of less than five hundred square feet, and if required 66  
to be licensed would be classified as risk level one pursuant to 67  
rules establishing licensing categories for retail food 68  
establishments adopted under section 3717.33 of the Revised 69  
Code, on the condition that the establishment offers the food 70  
for sale at retail not more than six months in each calendar 71  
year; 72

(6) A cottage food production operation, on the condition 73  
that the operation offers its products directly to the consumer 74  
from the site where the products are produced; 75

(7) A tree syrup and sorghum processor, beekeeper, or 76  
apple syrup and apple butter processor described in division (A) 77  
of section 3715.021 of the Revised Code, on the condition that 78  
the processor or beekeeper offers only tree syrup, sorghum, 79  
honey, apple syrup, or apple butter directly to the consumer 80  
from the site where those products are processed; 81

(8) A person who annually maintains five hundred or fewer 82  
birds, on the condition that the person offers the eggs from 83  
those birds directly to the consumer from the location where the 84  
eggs are produced or at a farm product auction to which division 85  
(B)(11) of this section applies; 86

(9) A person who annually raises and slaughters one 87  
thousand or fewer chickens, on the condition that the person 88  
offers dressed chickens directly to the consumer from the 89  
location where the chickens are raised and slaughtered or at a 90  
farm product auction to which division (B)(11) of this section 91  
applies; 92

(10) A person who raises, slaughters, and processes the 93  
meat of nonamenable species described in divisions (A) and (B) 94  
of section 918.12 of the Revised Code, on the condition that the 95  
person offers the meat directly to the consumer from the 96  
location where the meat is processed or at a farm product 97  
auction to which division (B)(11) of this section applies; 98

(11) A farm product auction, on the condition that it is 99  
registered with the director pursuant to section 3717.221 of the 100  
Revised Code that offers for sale at the farm product auction 101  
only one or more of the following: 102

(a) The products described in divisions (B)(8) to (10) of 103  
this section that are produced, raised, slaughtered, or 104

processed, as appropriate, by persons described in divisions (B)	105
(8) to (10) of this section;	106
(b) Fresh unprocessed fruits or vegetables;	107
(c) Products of a cottage food production operation;	108
(d) Tree syrup, sorghum, honey, apple syrup, or apple	109
butter that is produced by a tree syrup or sorghum producer,	110
beekeeper, or apple syrup or apple butter processor described in	111
division (A) of section 3715.021 of the Revised Code.	112
(12) An establishment that, with respect to offering food	113
for sale, offers only alcoholic beverages or prepackaged	114
beverages that are not potentially hazardous;	115
(13) An establishment that, with respect to offering food	116
for sale, offers only alcoholic beverages, prepackaged beverages	117
that are not potentially hazardous, or commercially prepackaged	118
food that is not potentially hazardous, on the condition that	119
the commercially prepackaged food is contained in displays, the	120
total space of which equals less than two hundred cubic feet on	121
the premises of the establishment;	122
(14) An establishment that, with respect to offering food	123
for sale, offers only fountain beverages that are not	124
potentially hazardous;	125
(15) A person who offers for sale only one or more of the	126
following foods at a festival or celebration, on the condition	127
that the festival or celebration is organized by a political	128
subdivision of the state and lasts for a period not longer than	129
seven consecutive days:	130
(a) Fresh unprocessed fruits or vegetables;	131
(b) Products of a cottage food production operation;	132

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

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

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

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

(a) Fresh unprocessed fruits or vegetables;

(b) Products of a cottage food production operation;

(c) Tree syrup, sorghum, honey, apple syrup, or apple butter that is produced by a tree syrup or sorghum producer, beekeeper, or apple syrup or apple butter processor described in division (A) of section 3715.021 of the Revised Code;

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

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

(f) The products or items described in divisions (B) (8) to

(10) of this section, on the condition that those products or 161  
items were produced by the person offering to sell them, and 162  
further conditioned that, with respect to eggs offered, the 163  
person offering to sell them annually maintains five hundred or 164  
fewer birds, and with respect to dressed chickens offered, the 165  
person annually raises and slaughters one thousand or fewer 166  
chickens. 167

(17) (a) An establishment to which ~~all~~ both of the 168  
following apply: 169

(i) The establishment ~~serves~~ has been issued an A-2 permit 170  
under section 4303.03 of the Revised Code or an A-2f permit 171  
under section 4303.031 of the Revised Code, annually produces 172  
ten thousand gallons or less of wine, and sells that wine in 173  
accordance with Chapter 4303. of the Revised Code on the 174  
premises of the establishment; 175

(ii) The establishment serves unopened commercially 176  
prepackaged food, other than wine in a form that prevents direct 177  
human contact prior to and during service; 178

~~(ii) Sales of the prepackaged food do not exceed more than~~ 179  
~~five per cent of the total gross receipts of the establishment;~~ 180

(iii) The establishment ~~has been issued an A-2 permit~~ 181  
~~under section 4303.03 or an A-2f permit under section 4303.031~~ 182  
~~of the Revised Code and annually produces ten thousand gallons~~ 183  
~~or less of wine;~~ amount of the establishment's commercially 184  
prepackaged food sales, other than wine sales, for the previous 185  
calendar year did not exceed five per cent of the 186  
establishment's total gross receipts. 187

(b) The owner or operator of the establishment shall 188  
notify the director that it is exempt from licensure because it 189

qualifies under division (B) (17) (a) of this section. The owner 190  
or operator also shall ~~disclose to customers that the~~ 191  
~~establishment is exempt from licensure~~display a notice in a 192  
place conspicuous to all of its guests informing them that the 193  
establishment is not required to be licensed as a retail food 194  
establishment. 195

**Section 2.** That existing section 3717.22 of the Revised 196  
Code is hereby repealed. 197