

H. B. No. 160
As Passed by the House

_____ moved to amend as follows:

In line 1 of the title, delete "section" and insert "sections 3717.22 and" 1
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In line 2 of the title, after "cream" insert "and to revise the exemption from retail food establishment licensure that applies to certain wineries" 3
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In line 3, delete "section" and insert "sections 3717.22 and" 6

After line 4, insert: 7

"Sec. 3717.22. (A) The following are not retail food establishments: 8
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(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; 10
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(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 14
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entity is regulated by the department of agriculture as a food 18
processing establishment under section 3715.021 of the Revised 19
Code; 20

(3) A business or that portion of a business that is 21
regulated by the federal government or the department of 22
agriculture as a food manufacturing or food processing business, 23
including a business or that portion of a business regulated by 24
the department of agriculture under Chapter 911., 913., 915., 25
917., 918., or 925. of the Revised Code. 26

(B) All of the following are exempt from the requirement 27
to be licensed as a retail food establishment: 28

(1) An establishment with commercially prepackaged foods 29
that are not potentially hazardous and contained in displays, 30
the total space of which equals less than two hundred cubic 31
feet; 32

(2) A person at a farmers market that is registered with 33
the director of agriculture pursuant to section 3717.221 of the 34
Revised Code that offers for sale only one or more of the 35
following: 36

(a) Fresh unprocessed fruits or vegetables; 37

(b) Products of a cottage food production operation; 38

(c) Tree syrup, sorghum, honey, apple syrup, or apple 39
butter that is produced by a tree syrup or sorghum producer, 40
beekeeper, or apple syrup or apple butter processor described in 41
division (A) of section 3715.021 of the Revised Code; 42

(d) Wine as authorized under section 4303.2010 of the 43
Revised Code; 44

(e) Commercially prepackaged food that is not potentially 45

hazardous, on the condition that the food is contained in 46
displays, the total space of which equals less than one hundred 47
cubic feet on the premises where the person conducts business at 48
the farmers market. 49

(3) A person who offers for sale at a roadside stand only 50
fresh fruits and fresh vegetables that are unprocessed; 51

(4) A nonprofit organization exempt from federal income 52
taxation under section 501(c)(3) of the "Internal Revenue Code 53
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, that raises 54
funds by selling foods and that, if required to be licensed, 55
would be classified as risk level one in accordance with rules 56
establishing licensing categories for retail food establishments 57
adopted under section 3717.33 of the Revised Code, if the sales 58
occur inside a building and are for not more than seven 59
consecutive days or more than fifty-two separate days during a 60
licensing period. This exemption extends to any individual or 61
group raising all of its funds during the time periods specified 62
in division (B)(4) of this section for the benefit of the 63
nonprofit organization by selling foods under the same 64
conditions. 65

(5) An establishment that offers food contained in 66
displays of less than five hundred square feet, and if required 67
to be licensed would be classified as risk level one pursuant to 68
rules establishing licensing categories for retail food 69
establishments adopted under section 3717.33 of the Revised 70
Code, on the condition that the establishment offers the food 71
for sale at retail not more than six months in each calendar 72
year; 73

(6) A cottage food production operation, on the condition 74
that the operation offers its products directly to the consumer 75

from the site where the products are produced;	76
(7) A tree syrup and sorghum processor, beekeeper, or	77
apple syrup and apple butter processor described in division (A)	78
of section 3715.021 of the Revised Code, on the condition that	79
the processor or beekeeper offers only tree syrup, sorghum,	80
honey, apple syrup, or apple butter directly to the consumer	81
from the site where those products are processed;	82
(8) A person who annually maintains five hundred or fewer	83
birds, on the condition that the person offers the eggs from	84
those birds directly to the consumer from the location where the	85
eggs are produced or at a farm product auction to which division	86
(B) (11) of this section applies;	87
(9) A person who annually raises and slaughters one	88
thousand or fewer chickens, on the condition that the person	89
offers dressed chickens directly to the consumer from the	90
location where the chickens are raised and slaughtered or at a	91
farm product auction to which division (B) (11) of this section	92
applies;	93
(10) A person who raises, slaughters, and processes the	94
meat of nonamenable species described in divisions (A) and (B)	95
of section 918.12 of the Revised Code, on the condition that the	96
person offers the meat directly to the consumer from the	97
location where the meat is processed or at a farm product	98
auction to which division (B) (11) of this section applies;	99
(11) A farm product auction, on the condition that it is	100
registered with the director pursuant to section 3717.221 of the	101
Revised Code that offers for sale at the farm product auction	102
only one or more of the following:	103
(a) The products described in divisions (B) (8) to (10) of	104

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

(b) Products of a cottage food production operation;	133
(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;	134 135 136 137
(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;	138 139 140 141
(e) Fruit butter produced at the festival or celebration and sold from the production site.	142 143
(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:	144 145 146 147
(a) Fresh unprocessed fruits or vegetables;	148
(b) Products of a cottage food production operation;	149
(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;	150 151 152 153
(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;	154 155 156 157 158
(e) Cider and other juices manufactured on site at the farm market;	159 160

(f) The products or items described in divisions (B) (8) to 161
(10) of this section, on the condition that those products or 162
items were produced by the person offering to sell them, and 163
further conditioned that, with respect to eggs offered, the 164
person offering to sell them annually maintains five hundred or 165
fewer birds, and with respect to dressed chickens offered, the 166
person annually raises and slaughters one thousand or fewer 167
chickens. 168

(17) (a) An establishment to which all of the following 169
apply: 170

(i) ~~The establishment serves~~ has been issued an A-2 permit 171
under section 4303.03 of the Revised Code or an A-2f permit 172
under section 4303.031 of the Revised Code, annually produces 173
ten thousand gallons or less of wine, and sells that wine in 174
accordance with Chapter 4303. of the Revised Code on the 175
premises of the establishment. 176

(ii) The establishment serves unopened commercially 177
~~prepackaged food in a form that prevents direct human contact~~ 178
~~prior to and during service;~~ 179

~~(ii) Sales of the prepackaged food do not exceed more than~~ 180
~~five per cent of the total gross receipts of the establishment;~~ 181
, other than wine. 182

~~(iii) The establishment has been issued an A 2 permit~~ 183
~~under section 4303.03 or an A 2f permit under section 4303.031~~ 184
~~of the Revised Code and annually produces ten thousand gallons~~ 185
~~or less of wine;~~ amount of the establishment's commercially 186
prepackaged food sales, other than wine sales, for the previous 187
calendar year did not exceed five per cent of the 188
establishment's total gross receipts. 189

(b) The owner or operator of the establishment shall 190
notify the director that it is exempt from licensure because it 191
qualifies under division (B) (17) (a) of this section. The owner 192
or operator also shall ~~disclose to customers that the~~ 193
~~establishment is exempt from licensure~~display a notice in a 194
place conspicuous to all of its guests informing them that the 195
establishment is not required to be licensed as a retail food 196
establishment." 197

In line 73, delete "section" and insert "sections 3717.22 and" 198

In line 74, delete "is" and insert "are" 199

The motion was _____ agreed to.

SYNOPSIS 200

Small wineries exemption 201

R.C. 3717.22 202

Regarding the retail food establishment license exemption 203
for a small winery (A-2 or A-2f liquor permit holder) – which 204
applies only when the winery sells commercially prepackaged food 205
that constitutes 5% or less of sales – clarifies that 206
commercially prepackaged food does not include wine. 207

Requires the commercially prepackaged food to be unopened 208
and specifies that the 5% threshold is based on the winery's 209
sales in the previous year. 210

Requires an owner or operator of the winery to display a 211
notice informing guests that the establishment is not required 212

to be licensed as a retail food establishment. (Current law 213
requires the owner or operator to disclose to customers that the 214
establishment is exempt from the license.) 215