Virginia M. McInerney *Legislative Service Commission*

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(As Passed by the House)

Reps. Terwilleger, Padgett, D. Miller, Krupinski, Verich, Corbin, Mottley, Damschroder, Mead, Opfer, Evans, O'Brien, Schuler, Perz, Barnes, Austria, Brading, Barrett, James, Maier, Ferderber, Hartnett

BILL SUMMARY

- Requires that all "retail food establishments" be licensed according to statewide standards.
- Extends the licensing requirement to establishments that sell over-the-counter drugs, nutrients designed for use in lieu of pharmaceuticals, and dietary supplements.
- Enforces the retail food establishment licensing program through local boards of health.
- Requires adoption of the Ohio Uniform Food Safety Code by the Director of Agriculture and the Public Health Council as the statewide standard for food safety in retail food establishments and food service operations.
- Permits the activities of a retail food establishment and food service operation to occur in the same facility under one license by issuing a license for the primary business with an endorsement to engage in the secondary business.
- Creates the Retail Food Safety Advisory Council to make recommendations regarding food safety in retail food establishments and food service operations.
- Modifies provisions of the food service operation licensing program, including the procedures for conducting inspections, to correspond with the retail food establishment licensing program.

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FOOD SAFETY

An overview

The bill creates a statewide licensing program for retail food establishments. Although defined broadly as any place where food is stored for retail sale, a "retail food establishment" can generally be thought of as a grocery store or supermarket. The licensing program is patterned after the existing licensing program for food service operations. A "food service operation," which is defined broadly as any place where food is prepared for individual serving on its premises, can generally be thought of as a restaurant.

For purposes of the retail food establishment licensing program, the bill requires adoption of statewide standards. These standards, combined with the statewide standards for the food service operation licensing program, are to be compiled as the Ohio Uniform Food Safety Code. The Department of Agriculture and the Public Health Council have responsibility for creating the Code. The Retail Food Safety Advisory Council, which is created by the bill, has the duty of making recommendations for the Code.

Responsibility for implementing and enforcing the retail food establishment licensing program rests primarily with the boards of health of each city and general health district, as is the case in the existing licensing program for food service operations. If a district's board of health is not qualified to administer a licensing program, the Director of Agriculture must appoint another board of health to act as licensor. If no qualified board is available, the Director must act as licensor.

As part of its requirement for licensing of both retail food establishments and food service operations, the bill provides for the issuance of a single license to a business that simultaneously engages in activities as a food service operation and a retail food establishment. Under the bill, a business engaged in multiple activities is evaluated by the licensor to determine whether its "primary business" is that of a retail food establishment or that of a food service operation. The business is required to be licensed according to its primary business. An additional license for the secondary activities is not required, however, if the license holder receives an "endorsement" on the primary license to engage in the secondary activities.

STATEWIDE STANDARDS

Ohio Uniform Food Safety Code

(sec. 3717.05)

The bill requires that the Director of Agriculture and the Public Health Council adopt rules establishing standards for safe food handling and sanitation in retail food establishments and food service operations. The rules, which are to be compiled as the Ohio Uniform Food Safety Code, are for use by the licensors of retail food establishments and food service operations in ensuring the safe handling of food in Ohio. All scientific provisions that are relevant to both retail food establishments and food service operations are to be adopted by the Director and the Council with each other's concurrence.

The bill specifies that the Ohio Uniform Food Safety Code must include the following:

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

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

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

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

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

Use of federal model

If the United States Food and Drug Administration (FDA) establishes a model food code, the bill requires that the Ohio Uniform Food Safety Code be based on the most current version of the model code. If the FDA adopts, modifies, or rescinds a provision in the model code, the bill requires that the Director of Agriculture and Public Health Council make corresponding changes in the Ohio Uniform Food Safety Code to ensure that it continues to conform with the model code. The changes must be made not later than nine months after the FDA's action is taken.

The bill provides for the Ohio Uniform Food Safety Code to differ from the FDA model code in two circumstances: (1) if rules can be adopted in Ohio that provide protection at least as effective as that which would be provided by basing the rules on the model code and (2) if local conditions warrant the adoption of standards that are different from the model code. In either case, for the Ohio Uniform Food Safety Code to differ from the model code, the Director of Agriculture and the Public Health Council must concur.

Exclusive state power to adopt rules

(sec. 3717.04)

The bill provides that the Director of Agriculture, Public Health Council, and Director of Health have the exclusive power in Ohio to adopt rules regarding retail food establishments and food service operations. It further provides that the rules must be applied uniformly throughout the state. All rules must be adopted in accordance with the Administrative Procedure Act. Portions may be adopted by referencing all or any part of any federal regulations pertaining to food safety. Adoption of rules by reference, however, is subject to the approval of the Joint Committee on Agency Rule Review.

State agency liaisons

(sec. 3717.06)

The bill requires that the Director of Agriculture and Director of Health each create a food safety liaison position within their respective departments. The position in the Department of Agriculture is to be filled by an individual knowledgeable in food safety and the epidemiology of foodborne illness. The position in the Department of Health is to be filled by an individual knowledgeable in food safety rules concerning food service operations and the epidemiology of foodborne illness. The individuals appointed are to serve as liaisons between the departments and as the departments' liaisons with other state agencies, boards of health, representatives of retail and other food establishments, representatives of food service operations, and the federal government.

Promotion of food safety

(sec. 3717.08)

The bill requires that the Director of Agriculture and the Director of Health strive to increase consumer confidence in Ohio's food supply by promoting food safety awareness and education. Their efforts must be made, when appropriate and available, through partnerships with representatives of retail food establishments,

food service operations, and the academic community, including the Ohio State University Extension Service.

Training programs

As part of their food safety promotion, the Directors must offer training programs regarding the Ohio Uniform Food Safety Code. Although their programs may be offered separately, the Directors are required to coordinate the content of the programs to the greatest extent practicable. The programs must be made available to employees of the Department of Agriculture and Department of Health, representatives of boards of health and the health officials employed by the boards, and representatives of retail food establishments and food service operations.

Statewide conferences

The bill requires the Directors to promote food safety by co-sponsoring a biennial statewide food safety conference. Additional statewide food safety conferences may be held as the Directors consider appropriate.

Certification in food protection

(sec. 3717.09)

Under the current food service operation licensing program, the Public Health Council is required to adopt rules for approving courses of study in food protection. The Director of Health must certify an individual who successfully completes an approved course of study and meets all other requirements specified in rules. The bill provides that the certification program applies not only to food protection in food service operations, but to food protection in retail food establishments as well.

LOCAL ENFORCEMENT

Surveys of boards of health

(sec. 3717.11; Section 4)

Current law requires that each board of health be surveyed by the Director of Health to determine whether it is qualified to administer and enforce the food service operation licensing program. Surveys must be conducted at least once every three years. If determined to be qualified, the board of health must be approved to act as the licensor of food service operations. If not qualified, the board cannot be approved or must have its approval revoked. The Director then

assumes the duties of licensing food service operations for the board or designates another board of health to act as licensor.

For purposes of licensing retail food establishments, the bill extends the system of approving boards of health to the Director of Agriculture. Before the licensing program takes effect February 1, 2001, the Director is required to conduct a preliminary survey of each board. If the Director determines that the board is deficient, the bill requires that the Director grant the board an opportunity to take corrective action. The Director must notify the board of its deficiencies, specify the corrective actions that must be taken, and specify a deadline by which the board must complete the action.

The bill modifies the system of approving boards for the food service operation licensing program and applies the changes to the retail food establishment licensing program. These changes include: (1) a requirement that the Director's surveys include consideration of not only whether a board is qualified to act as a licensor, but whether the board has the capacity to act as a licensor and whether it is qualified and capable of abiding by the Ohio Uniform Food Safety Code, (2) a requirement that the Directors schedule and conduct their surveys in a manner that minimizes, to the extent practicable, intrusion on and inconvenience to the board, (3) specified authority for a board to appeal a decision by the Director of Agriculture or Director of Health to deny or revoke the board's approval, and (4) a requirement that a board of health be appointed to act as an alternative licensor for another board only if it is within reasonable proximity to the original board.

Employees

(sec. 3707.33)

Existing law authorizes a board of health to appoint, define the duties of, and fix the compensation of the number of persons necessary to carry out its duties, including the appointment of inspectors. The bill specifies that a board's authority to appoint employees applies to the retail food establishment and food service operation licensing programs.

Embargoing food

(sec. 3715.551)

Under Ohio's Pure Food and Drug Law, the Director of Agriculture has the power to embargo any food that is adulterated, misbranded, or expired. A warning tag is attached to the food and the food cannot be sold or disposed of otherwise.

The Director must petition the appropriate court for an order to condemn the food and the court may order that the food be destroyed.

The bill extends the authority to embargo food to a board of health when acting as the licensor of retail food establishments or food service operations, the Director of Health when acting as the licensor of food service operations, or a representative authorized to act on behalf of the board or Director. The bill requires that the Director of Agriculture adopt rules in accordance with the Administrative Procedure Act specifying the conditions under which a food may be embargoed by a board of health or the Director of Health. The rules must specify the procedures to be followed in embargoing the food.

RETAIL FOOD ESTABLISHMENT LICENSING

Background

(sec. 3715.02)

Currently, state and local regulation of "retail food establishments" is limited to the following:

(1) Am. Sub. S.B. 87 of the 122nd General Assembly required that the Director of Agriculture adopt rules under the Pure Food and Drug Law establishing standards for "food establishments" and their sanitation. For purposes of these rules, a food establishment is defined as a premises or part of a premises, other than a food service operation, where food is prepared, processed, stored, manufactured, transported, or otherwise held or handled for sale or distribution. The statute specifies that the rules apply when no other Ohio law applies. It appears that rules have not yet been adopted.

(2) Some boards of health, under their general power to adopt rules for the public health, have instituted licensing programs for retail food establishments. According to a representative of the Department of Health, 72 of Ohio's 144 boards of health have such licensing programs.

Licensing requirement

(secs. 3717.01(C) and 3717.21; Section 3)

The bill repeals the law requiring the Director of Agriculture to adopt rules for "food establishments" under the Pure Food and Drug Law, to the extent that the rules apply to food establishments engaged in retail business. Certain wholesale food establishments continue to be subject to the rules.

In place of adopting rules for retail food establishments under the Pure Food and Drug Law, the bill creates a comprehensive licensing program for all "retail food establishments." The licensing program becomes effective February 1, 2001, and applies to both private and public entities. A separate license is required for each retail food establishment operated.

For purposes of specifying the persons and government entities subject to the licensing requirement, the bill defines "retail food establishment" as a premises or part of a premises where food is stored, processed, prepared, manufactured, or otherwise held or handled for retail sale. This is essentially the same definition used in current law authorizing rules for "food establishments," except that under the bill, a "retail food establishment" does not include a premises where food is transported. The bill extends the licensing requirement to any premises or part of a premises where the specified retail activities are carried on with respect to over-the-counter drugs, nutrients designed for use in lieu of pharmaceuticals, and products designed for use as dietary supplements.

As used in the definition of retail food establishment, "retail" means the sale of food to a person who is the ultimate consumer. "Prepared" means any action that affects a food, including receiving and maintaining it at the temperature at which it was received. The bill makes no distinction between the preparation of food that occurs in a retail food establishment and that which occurs in a food service operation.

Penalty

(sec. 3717.99)

The bill establishes a criminal penalty for violating the licensing requirement or failing to comply with any other requirement the bill establishes for retail food establishments. The criminal charge is the same as that which currently applies for failing to comply with the food service operation licensing program: a third degree misdemeanor on a first offense, a second degree misdemeanor on a second offense, with each day of continued violation constituting a separate offense.

Seasonal and temporary establishments

(secs. 3717.01(D) and (E) and 3717.22(E))

The bill specifies that its licensing requirements for retail food establishments extend to "seasonal" and "temporary" retail food establishments. A seasonal establishment is one that is operated for not more than six months in a

licensing period. A temporary establishment is one that is operated for not more than five consecutive days.

With regard to temporary licenses, a person or government entity may receive not more than ten licenses per licensing period to operate at different events within the licensor's jurisdiction. For each event, however, the same person or entity may receive only one temporary license. In certain cases, a temporary license may be issued that allows the holder to operate for more than five days at a time, but the person may receive only one such license per licensing period. The license must be used at an event organized by a county or independent agricultural society. To receive the license, the person must be a resident of the county or one of the counties for which the agricultural society was organized.

Application procedures

(sec. 3717.23(A) and (B))

Under the bill, each person or government entity seeking a license for a retail food establishment must apply to the appropriate licensor. The appropriate licensor is the board of health or the Director of Agriculture, whichever is acting as the licensor for the health district in which the retail food establishment is located. The applicant must include with the application all information necessary for the licensor to process the application, as requested by the licensor. Applications must be submitted on a form prescribed and furnished by the licensor. The licensor must use an application form that is prescribed and furnished to the licensor by the Director of Agriculture or a form prescribed by the licensor that has been approved by the Director.

The bill requires that the licensor review all applications received. The licensor must issue a license for a new retail food establishment when the applicant submits a complete application and the licensor determines that the applicant meets all other requirements. A license must be issued on a form prescribed and furnished by the Director of Agriculture.

Renewal

(sec. 3717.23(B), (C), and (D))

The bill provides that a retail food establishment license expires at the end of the licensing period for which it is issued. The licensing period is the same as the existing licensing period for food service operations: the first day of March to the last day of February of the succeeding year. A license remains valid until scheduled to expire, unless earlier suspended or revoked.

A retail food establishment license, other than a temporary license, may be renewed. The bill requires that a licensor issue a renewed license on receipt of a complete renewal application. The application must be submitted not later than the first day of March, except in the case of a seasonal retail food establishment. The renewal application for a seasonal establishment must be submitted before commencing operation in a new licensing period. A license may be renewed prior to the first day of March, but not before the first day of February that precedes the licensing period for which the license is being renewed.

The bill establishes a penalty for late renewal of a license. If the renewal application is not postmarked on or before the first day of March or, in the case of a seasonal establishment, the first day of operation in a new licensing period, the licensor must assess a penalty of 25% of the fee charged for renewing the license. The licensor may not renew the license until the penalty is paid.

Limitations

(sec. 3717.22(F))

The bill authorizes a licensor to place restrictions or conditions on a retail food establishment license, based on the equipment or facilities of the establishment. The restrictions or conditions may limit the types of food that may be stored, processed, prepared, manufactured, or otherwise held or handled for retail sale.

Display

(sec. 3717.22(G))

Under the bill, a person or government entity holding a license for a retail food establishment is required to display the license for that establishment at all times at the licensed location.

Transfer

(sec. 3717.26)

As is currently the case for food service operation licenses, a retail food establishment license may be transferred on request. The bill provides for transfer of a license in either of the following circumstances: (1) the sale or disposition of the retail food establishment or (2) the relocation of the retail food establishment. Transfer may occur only if the licensor determines that the person or government entity requesting the transfer is in compliance with the bill's licensing requirements for retail food establishments. In the case of the sale or disposition of a retail food establishment, the license may be transferred only if the establishment holding the

license consents to the transfer. A license may not be transferred more than once in a licensing period. A temporary license is not transferable.

Impact of annexation

(sec. 3717.12)

Current law provides for the continued validity of food service operation licenses issued by a board of health when all or part of the territory within a health district becomes subject to the jurisdiction of a different board of health. The bill extends the same continuation of validity to the retail food establishment licenses.

ENDORSEMENT TO ENGAGE IN MULTIPLE FOOD-SELLING ACTIVITIES

Endorsement process

(secs. 3717.24 and 3717.44; Section 3)

The bill establishes a system by which the services of both a retail food establishment and food service operation may be provided within the same facility under one license. Under this system, the licensor includes an "endorsement" to engage in the additional activities on the license issued to a person or government entity to operate a retail food establishment or food service operation. The issuance of endorsements becomes effective February 1, 2001.

The determination of whether the person or entity must be licensed as a retail food establishment or food service operation is to be made according to the primary business. Each determination, which must be made according to criteria specified in the Ohio Uniform Food Safety Code, is made by the licensor for the area in which the facility is located. If the licensor of retail food establishments in the area is different from the licensor of food service operations, the determination shall be made jointly by both licensors.

A request for an endorsement may be submitted with an application for issuance or renewal of a license for the primary business, or may be submitted separately. Procedures for making a separate request are the same as the procedures used in applying for a license for the primary business.

An endorsement may be suspended or revoked in the same manner as a license may be suspended or revoked. The suspension or revocation of an endorsement does not affect the license that includes the endorsement. If the license of the primary business is suspended or revoked, however, the endorsement included on the license is also suspended or revoked.

The bill specifies that if a person or government entity other than the license holder operates a retail food establishment or food service operation within the license holder's facility, the establishment or operation may not be operated pursuant to an endorsement. The person or entity must receive a separate license for the establishment or operation.

IMPLEMENTATION OF THE LICENSING PROGRAMS

Exemptions from food service operation licensing

(sec. 3717.42(B))

With respect to the requirement to be licensed as a food service operation, existing law contains exemptions for several entities, including private homes, churches, fraternal or veterans' organizations, volunteer fire and emergency medical service organizations, day-care facilities, and operations serving five or fewer persons daily. Under the bill, the following are also exempt:

(1) A bed-and-breakfast operated in a private home that offers food to guests. The home must be owner-occupied and breakfast must be the only meal offered. The number of available guest bedrooms cannot exceed six and the number of guests served cannot exceed 16. The consumer must be informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected as a food service operation.

(2) A stand operated on the premises of a private home by one or more children under the age of 12, if the food served is not potentially hazardous.

Exemptions from retail food establishment licensing

(sec. 3717.22(B))

With respect to the requirement to be licensed as a retail food establishment, the bill exempts the following:

(1) An operation with commercially prepackaged foods that are not potentially hazardous and contained in displays of less than ten cubic feet;

(2) A storage facility of less than 500 square feet containing prepackaged foods that are not potentially hazardous;

(3) A roadside market that offers only fresh fruits and fresh vegetables that are unprocessed;

(4) A nonprofit organization exempt from federal income taxation that raises funds by selling displayed foods, if the foods are not potentially hazardous and the display is made for not more than seven consecutive days or more than 52 separate days per year.

Coordination of licensing requirements

(secs. 3717.22(A) and 3717.42(A); technical changes: secs. 911.01, 911.011, 911.02, 911.021, and 3732.07(A) (repealed))

With respect to either a food service operation or retail food establishment, if a facility is licensed as one, the bill specifies that the facility is not subject to licensure as the other. The bill also specifies that any person or entity exempt from being licensed as a food service operation is exempt from being licensed as a retail food establishment, and vice versa.

As under existing law for food service operations, the bill provides that a business is not subject to licensure as a retail food establishment if it is regulated by the federal government or the Department of Agriculture as a food manufacturing or food processing operation, including a cold-storage facility, egg processing plant, or bakery. To correspond with this provision, the bill eliminates duplicative provisions from existing laws that apply to bakeries and food service operations. In the case of bakeries, the bill specifies that existing laws applicable to bakeries will apply only to wholesale bakeries, since under the bill, retail bakeries will be regulated as retail food establishments. The bill provides that a wholesale bakery is to be regulated only as a bakery, and not as a retail food establishment or food service operation, even if the bakery sells bakery products at retail on its premises, as long as the bakery's primary business remains wholesale.

Procedures for setting licensing fees

(secs. 3709.09, 3717.07, 3717.25(A), and 3717.45(A))

Under current law, each board of health has authority to establish a system of fees to pay the costs of services it provides, including the licensing of food service operations. The fees must be set according to categories and uniform methodologies specified in rules adopted by the Public Health Council. Before a board of health's proposed licensing fee can be imposed on a particular category, the board must notify the food service operations that will be affected and hold a public hearing. The same procedure is used if the Director of Health is acting as licensor.

The bill continues the existing procedures for setting licensing fees for food service operations and applies the same procedure to the setting of licensing fees

for retail food establishments, including existing law's mechanism for disapproval of a proposed fee by the district advisory council or legislative authority with jurisdiction over the board of health. The fee-setting procedure applies to the Director of Agriculture when the Director is acting as the licensor of retail food establishments.

The rules for setting licensing fees in the retail food establishments licensing program are to be adopted by the Director of Agriculture under the same section of the Revised Code that the Public Health Council uses to adopt rules for setting fees in the food service operation licensing program. When the Director adopts rules, the bill requires consideration of recommendations received from any advisory board or other entity representing the interests of retail food establishments. When the Council adopts rules, in addition to its current requirement to consider recommendations from advisory boards created by statute, the bill requires consideration of recommendations from any other advisory board or other entity representing food service operations.

Additional licensing fees for state use

(secs. 914.24, 3717.25(C), and 3717.45(C))

As currently is the case in the food service operation licensing program, the bill provides for the collection of fees from retail food establishments that are in addition to the fees paid for receiving or renewing a license. The additional fees are for use by the state in administering and enforcing the food safety laws. The fees collected for use by the Director of Agriculture must be deposited in the state treasury to the credit of the existing Food Safety Fund, as are all other fees and fines collected by the Director pursuant to the bill.

Fees in addition to licensing fees

(secs. 3717.25(B) and 3717.45(B))

Under the existing law food service operation licensing program, the licensor has authority to charge fees that are in addition to the fees it may charge for licensing. A fee may be charged for any of the following: (1) attendance at a course of study it offers in food protection, (2) reviewing plans for food service operations, and (3) any necessary collection and bacteriological examination of samples, which are limited to water samples. The bill extends the authority to charge fees to the following: (1) any sample collected from a food service operation and (2) any similar service specified in rules adopted under the bill by the Public Health Council. The bill clarifies that the fees charged for reviewing "plans" are for reviewing "facility layout and equipment specifications."

With regard to the retail food establishment licensing program, the bill extends to licensors similar authority to charge additional fees. Specifically, the licensor may charge fees for the following: (1) attendance at an approved course of study offered in food protection as it pertains to retail food establishments, (2) review of facility layout and equipment specifications pertaining to retail food establishments, and (3) any necessary collection and bacteriological examination of samples from retail food establishments or similar services specified in rules adopted under the bill by the Director of Agriculture.

Expiration of initial licenses

(secs. 3717.23(C) and 3717.43(C))

Current law provides that a license issued to a food service operation expires at the end of the licensing period (March to February) for which the license is issued. Under the bill, a license issued to a new food service operation after the first day of December does not expire until the end of the next full licensing period. The same expiration provision applies to initial retail food establishment licenses.

Applications for food service operation licenses

(sec. 3717.43(A))

Existing law specifies application procedures to receive a license to operate a food service operation. The bill adds a requirement that an applicant include all information necessary for the licensor to process the application, as requested by the licensor.

Rules

(secs. 3717.33, 3717.51, and 3717.52)

In addition to the rules included in the Ohio Uniform Food Safety Code, the bill requires that other rules be adopted for the licensing programs. The Director of Agriculture must adopt rules regarding retail food establishments. The Public Health Council and Director of Health retain the duty to adopt rules regarding food service operations, but with modifications. In most cases, the modifications reflect the bill's transfer of certain rules to the Ohio Uniform Food Safety Code. All rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) and must be applied uniformly statewide.

Both the Director of Agriculture and the Director of Health are required to adopt rules establishing procedures for resolving disputes between license holders

and licensors. For the retail food establishment licensing program, the bill requires that the Director of Agriculture adopt rules regarding the following:

(1) Licensing categories for retail food establishments and licensing requirements for each category, including appropriate practices for the activities performed by a retail food establishment;

(2) Standards for collection of food samples from retail food establishments for purposes of identifying adulteration and misbranding;

(3) Records to be generated and maintained by licensed retail food establishments;

(4) Appeals of suspensions and revocations of licenses;

(5) Surveys of boards of health to determine whether they are qualified and have the capacity to administer the retail food establishment licensing program and to abide by the Ohio Uniform Food Safety Code;

(6) Reinstatement of a board of health as licensor after approval has been revoked;

(7) Any other matter the Director considers relevant to the retail food establishment licensing program.

Computerization of services

(secs. 3717.23(H), 3717.27(A), 3717.43(H), and 3717.47(A); Section 7)

The bill requires that the Director of Agriculture and Director of Health study the feasibility of either unifying the computer systems of their respective departments or otherwise ensuring the compatibility of their computer systems. With regard to information maintained on the Internet, the bill requires that the Directors include electronic links to each other's information and the Ohio Uniform Food Safety Code. The computerized version of the Ohio Uniform Food Safety Code must contain electronic links to the Ohio Revised Code, Ohio Administrative Code, and any other information maintained on the Internet that the Directors jointly deem relevant.

The bill requires that the process for licensing retail food establishments and food service operations be computerized to the extent practicable. Inspections also must be computerized to the extent practicable. In these efforts, the bill requires assistance from the Department of Agriculture, Department of Health, and the Departments' Directors.

ENFORCEMENT OF THE LICENSING PROGRAMS

Inspections

(secs. 3717.27, 3717.33(E) to (G), 3717.47, 3717.51(C) and (D), and 4736.01)

Current law regarding the inspection of food service operations specifies in detail the types of inspections that must be conducted for different classifications of food service operations and the frequency at which the operations must be inspected. The bill eliminates the statutory detail and instead provides that all inspections must be conducted according to the procedures and schedule of frequency specified in rules adopted by the Public Health Council.

The bill extends the food service operation inspection procedures to the retail food establishment licensing program. The frequency of inspection occurs according to rules adopted by the Director of Agriculture. All inspections must be performed by a registered sanitarian or sanitarian-in-training. Each inspection must be recorded on a form prescribed and furnished by the Director or a form approved by the Director that has been prescribed by the board of health. A license holder must allow the licensor to conduct the inspection and to perform investigations of complaints. On request, the license holder must permit the licensor to examine relevant records.

The bill specifies that an inspection of either a food service operation or retail food establishment may include an investigation to determine the identity and source of a particular food. In an inspection of a retail food establishment, the licensor is permitted to remove from use any equipment, utensils, hand tools, or parts of facilities found to be maintained in a condition that presents a clear and present danger to the public health.

Confidentiality of information

(secs. 3717.28 and 3717.48)

The bill specifies that trade secrets and other forms of information that must be furnished to or are procured by a licensor are for the exclusive use and information of the licensor in the discharge of the licensor's duties. The bill provides that the information is not open to the public and cannot be used in any action or proceeding in any court. If the licensor is a board of health, the board is permitted to share the information with the Director of Agriculture and the Director of Health. When the licensor is either of the directors, each may share the information with the other. The licensor is required to maintain the confidentiality of the information. The information may be consolidated in statistical tables and published by the licensor in statistical form for the use and information of state and

local agencies and the public, if the statistics do not disclose details about a particular person or government entity. The bill further provides that an individual employed by a licensor or assisting the licensor in the licensing programs cannot willfully divulge any information that is confidential to anyone other than the licensor or the individual's superior.

Suspension and revocation in food service operations

(sec. 3717.49)

Under current law regarding food service operations, the licensor, whether it is a board of health or the Director of Health, has the authority to suspend or revoke a license on determining that an operation is in violation of any statute or rule. The operation may be given an opportunity to correct the violation before formal action is taken. In cases of immediate danger to the public health, a license may be suspended without giving notice or affording an opportunity for a hearing.

The bill clarifies that a health commissioner or other employee of the licensor of food service operations does not have the authority to suspend or revoke a food service operation license. Rather, the authority to act on behalf of the licensor is limited to giving a food service operation the opportunity to correct a violation as a means of avoiding formal action.

Suspension and revocation in retail food establishments

(secs. 3717.29 and 3717.30)

With respect to retail food establishments, if the licensor is a board of health, the board uses the same suspension and revocation procedures it uses in the food service operation licensing program. The standard for determining whether a violation warrants suspension or revocation without giving the license holder an opportunity to take corrective action, however, is changed from an "immediate danger" to the public health to a "clear and present danger" to the public health.

If the licensor is the Director of Agriculture, the bill establishes different procedures for suspension or revocation. Under these procedures, a license may be suspended or revoked on determining that a license holder is in violation of the bill's requirements or the rules adopted under it. A suspension or revocation is not effective until the license holder is given written notice of the violation, a reasonable amount of time to correct the violation, and an opportunity for a hearing. The bill requires that all actions and proceedings undertaken by the Director be conducted in accordance with the Administrative Procedure Act, with the following exceptions:

(1) If the license holder requests an adjudicatory hearing, the hearing will be held at the Director's offices in Licking County.

(2) The Director must notify a license holder by certified mail or personal delivery that the license holder is conditionally entitled to a hearing. The Director must specify in the notice that, in order to obtain a hearing, the hearing must be requested not later than ten days after receiving the notice.

(3) If the license holder requests a hearing, the hearing date cannot be later than ten days after the Director receives the request, unless the Director and license holder agree otherwise.

(4) The Director cannot postpone or continue a hearing without the consent of the license holder. If the license holder requests a postponement or continuation, the Director is not permitted to grant it unless the license holder demonstrates that an extreme hardship will be incurred in holding the hearing on the scheduled date. If a postponement or continuation is granted, the record must document the nature and cause of the extreme hardship.

(5) In lieu of proceeding with the hearing that was requested, and upon the license holder's written request to the Director, the license holder may submit to the Director documents, papers, and other written evidence to support the license holder's claim. The evidence must be submitted before the date that was set for the hearing.

(6) If the Director appoints a referee or examiner to conduct the hearing, a copy of the written adjudication report and recommendations of the referee or examiner must be served by certified mail on the Director and license holder not later than three business days following the conclusion of the hearing. Not later than three business days after receiving the report and recommendations, the license holder may file with the Director written objections. The Director must consider the objections before approving, modifying, or disapproving the report and recommendations. The order of the Director must be served on the license holder by certified mail not later than six business days after the Director receives the report.

(7) If the Director conducts the hearing, the Director must serve a decision by certified mail on the license holder not later than three business days following the close of the hearing.

(8) If no hearing is held, the Director must issue an order by certified mail to the license holder not later than three business days following the last date possible for a hearing, based on the record that is available.

(9) If the Director determines that an emergency exists that presents a clear and present danger to the public health, the Director may suspend a license, effective without a hearing. Thereafter, without delay, the Director is required to afford the license holder an opportunity for a hearing. On determining that there is no longer a danger to the public health, the Director may rescind the suspension without a hearing.

Sanctions based on sanitation

(secs. 3717.29(B), 3717.30(B), and 3717.49(A))

In the licensing programs for both food service operations and retail food establishments, the bill specifies that a violation that is evidenced by the documented failure to maintain sanitary conditions within the facility constitutes a violation of the laws regarding food safety. Therefore, the license holder is subject to suspension or revocation of the license.

Criminal prosecutions and court orders

(secs. 3717.31, 3717.32, and 3717.50)

As under existing law applicable to the food service operation licensing program, the bill provides for the prosecution of anyone who violates the retail food establishment licensing program. In health districts where the licensor of retail food establishments is a board of health, the prosecutor with jurisdiction in the area where a violation has occurred is required to commence an action against the violator at the request of the board. The board may request that the prosecutor commence a criminal prosecution or commence in common pleas court an action requesting a temporary restraining order or a preliminary or permanent injunction. When the violation is committed by a government entity, the board may request that the prosecutor commence a mandamus action. The bill authorizes the court to grant the appropriate relief if it is shown that the person or government entity has failed to comply with the retail food establishment licensing program.

In health districts where the Director of Agriculture is acting as the licensor of retail food establishments, the bill permits the Director to apply to the appropriate court of common pleas for a temporary or permanent injunction or other appropriate relief concerning a violation of the licensing program. Application must be made to the court in the county in which the violation occurs. Unlike the existing laws for the food service operation licensing program, the bill does not specify in the retail food establishment licensing program that the Attorney General is required to commence a criminal prosecution at the request of the Director. According to a representative of the Director, the Attorney General has this responsibility even though the bill does not expressly require it.

As in the food service operation licensing program, regardless of whether the licensor is a board of health or the Director of Agriculture, if a person or government entity is found to be in contempt of court for failing to comply with a restraining order, injunction, writ of mandamus, or other relief issued by the court, the person or entity is subject to a fine of not more than $1,000. Each day of noncompliance is a separate offense.

Also as specified in the food service operation licensing program, the bill specifies that the remedies available to a board of health or the Director of Agriculture in the retail food establishment licensing program are in addition to all other remedies provided by law.

Disposition of fines

(secs. 3717.31(D), 3717.32(C), and 3717.50(D))

The bill specifies the manner in which fines are to be used when collected in prosecutions of violations of the retail food establishment and food service operation licensing programs. Of the amount collected, 50% is retained by the licensor and 50% is credited to the general fund of the political subdivision in which the case is prosecuted. When the licensor is a board of health, the amount retained by the board is deposited in an appropriate fund created for the board's use in administering the applicable licensing program. If the Director of Health is acting as the licensor of food service operations, the amount is deposited in the state treasury to the credit of the General Operations Fund. If the Director of Agriculture is acting as the licensor of retail food establishments, the amount is deposited in the state treasury to the credit of the Food Safety Fund.

Enforcement support from the state

(secs. 3717.31(B), 3717.33(H), 3717.50(B), and 3717.52(D))

At the request of a board of health acting as the licensor of food service operations or retail food establishments, the Director of Health or Director of Agriculture, whichever is appropriate, is required under the bill to provide enforcement support to assist in the prosecution of a person who is not in compliance with the licensing program. Requests must be made, and assistance provided, according to rules adopted under the bill.

REGULATION OF SPECIFIC FOODS AND BUSINESSES

Articles subject to regulation

(sec. 3717.01(B))

For purposes of the Ohio Uniform Food Safety Code and the licensing of retail food establishments and food service operations, the bill retains the articles specified as foods in the current licensing program for food service operations. Specifically, "food" continues to mean any raw, cooked, or processed edible substance used or intended for use in whole or in part for human consumption, and includes ice, water and other beverages, and food ingredients. The bill includes chewing gum as an article subject to regulation as a food. For purposes of licensing retail food establishments, the bill includes the following:

(1) Over-the-counter drugs;

(2) Nutrients designed for use in lieu of pharmaceuticals;

(3) Products designed for use as dietary supplements.

Frozen dessert freezers

(secs. 3715.21 and 3715.211 (repealed), 3715.99, 3717.43(B)(3), 3732.07(B) (repealed), and 4745.01)

Current law requires a license from the Department of Agriculture before a business may operate one or more retail frozen dessert freezers. The bill repeals this requirement, since under the bill, the business is required to be licensed as a retail food establishment.

Ice

(secs. 3707.38 (repealed) and 3707.99)

Under current law, a permit from the board of health is required before a person may sell, deliver, or use ice for domestic purposes, if the ice is cut from a pond, lake, creek, or river. The bill repeals this provision, as it appears to be obsolete. The repeal does not eliminate the regulation of ice, however, since ice is currently included in the definition of "food" for purposes of licensing food service operations, and the bill includes ice in the definition of "food" for purposes of licensing retail food establishments.

Mobile food service operations

(sec. 3717.01(I))

Under current law, if a food service operation is operated from a movable vehicle, portable structure, or watercraft and routinely changes location, it is licensed as a mobile food service operation. Even if the operation serves only frozen desserts, beverages, nuts, popcorn, candy, bakery products, or any combination of those items, the operation must be licensed as a mobile food service operation. A mobile operation is not permitted to remain in any one location for more than 40 consecutive days. If it does, it is subject to licensure as a different type of food service operation.

The bill continues the current provisions regarding the licensing of mobile operations, but specifies that a mobile operation that remains in one location for more than 40 days may be subject to licensure as another type of food service operation or as a retail food establishment. The license that must be obtained as a result of remaining stationary depends on the activities being engaged in and the type of food being offered for sale.

Seasonal food service operations

(sec. 3717.01(J))

Under current law, a food service operation, other than a mobile operation, is licensed as a seasonal food service operation if it is operated for not more than eight months during an annual licensing period. The bill reduces the length of operation under a seasonal license to six months, which is the same length of operation the bill establishes for a seasonal retail food establishment.

Wholesale food establishments

(secs. 3715.02 and 3715.021)

The bill retains the authority of the Director of Agriculture to adopt rules under the Pure Food and Drug Law that establish standards and sanitation requirements for food establishments engaged in wholesale business. The rules, although apparently not yet adopted, are applicable to wholesale food establishments that are otherwise not regulated under Ohio law.

The bill continues to describe a wholesale food establishment as a premises or part of a premises where food is processed, manufactured, or otherwise held or handled for sale or distribution. It eliminates the activities of preparing, storing, and transporting food and adds the activity of packaging. Moreover, the bill specifies that all of the activities are done for sale or distribution of food at wholesale to persons other than the ultimate consumers.

The bill identifies that the following establishments as being subject to regulation as wholesale food establishments: bakeries, confectioneries, canneries,

bottlers, warehousers, or distributors. Also subject to regulation are entities that receive or salvage "distressed food" for sale or use as food. The bill specifies that an operation is not subject to regulation as a wholesale food establishment if its activities involving dairy products, meat, or poultry are regulated by the Department of Agriculture.

Flea markets

(sec. 3715.52)

Current law exempts a licensed food service operation from the prohibition against selling certain items at a flea market. The prohibited items include any baby food, infant formula, drugs, cosmetics, or any product with an expiration date. The bill extends the exemption to licensed retail food establishments.

RETAIL FOOD SAFETY ADVISORY COUNCIL

Background

(secs. 3717.02(A) and 3717.51; Section 5)

The bill abolishes the Food Service Advisory Board within the Department of Health, as well as the Public Health Council's authority to adopt rules regarding the Board. In place of the Board, the bill creates the Retail Food Safety Advisory Council. The bill provides that the Council is not subject to the laws that generally require newly created agencies and boards to be evaluated every four years for continuation or abolishment.

Duties

(sec. 3717.03(A))

The bill requires that the Retail Food Safety Advisory Council meet as necessary to fulfill its duties. A meeting must be held at the request of either the Director or on written request of three or more voting members. The bill provides that the Council's duties include the following:

(1) Making recommendations for the Ohio Uniform Food Safety Code;

(2) Examining specific food safety issues raised by the Director of Agriculture or Director of Health and making recommendations regarding those issues;

(3) Mediating unresolved issues among state agencies about the interpretation of rules adopted pursuant to the bill and making recommendations regarding the issues;

(4) Making recommendations to the Directors for improving the food safety awareness of consumers and their confidence in the state's food supply.

Study

(Section 6)

In addition to the Council's permanent duties, the bill requires that the Council conduct a five-year study. The study's purpose is twofold: (1) to evaluate the level of food safety awareness of consumers and their confidence in Ohio's food supply and (2) to determine whether the recommendations of the Food Safety Council have been implemented. The Food Safety Council, which existed as a result of Am. Sub. H.B. 113 of the 122nd General Assembly and is now disbanded, made recommendations that became the basis for most of the bill now being considered, including the bill's proposals for the following: (1) licensing of retail food establishments, (2) issuance of endorsements to provide multiple services in the same facility under one food-related license, (3) establishment of statewide food safety standards, and (4) creation of the Retail Food Safety Advisory Council.

The Retail Food Safety Advisory Council must complete its study on or before June 1, 2006. The Council is required to issue a report of its findings and recommendations. The report must be submitted to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate.

Membership

(sec. 3717.02)

The Council is to consist of 14 members. The Director of Agriculture or a designee and the Director of Health or a designee serve as co-chairpersons. The remaining 12 members are appointed jointly by the Directors, as follows:

(1) Three persons representing the interests of retail food establishments;

(2) Three persons representing the interests of food service operations;

(3) Four persons representing boards of health or the health departments operated by boards of health;

(4) One person representing the academic community who is knowledgeable in food science or food technology;

(5) One person representing the general public who is not employed by the state or its political subdivisions and has no pecuniary interest in a retail food establishment or food service operation.

In making appointments, the Directors are jointly required to consult with statewide trade and professional organizations that represent the interests of retail food establishments and food service operations. The organizations may nominate persons to be considered for appointment. Initial appointments must be made not later than 90 days after the bill's effective date.

After initial staggered terms of office, terms are three years. Each member must hold office from the date of appointment until the end of the term for which the member was appointed. Members may be reappointed.

Vacancies are to be filled in the manner provided for original appointments. A member appointed to fill a vacancy occurring before the expiration date of the term for which the member's predecessor was appointed is to hold office for the remainder of that term. A member continues to hold office after the expiration of the member's term until the member's successor takes office or a period of 60 days has elapsed, whichever occurs first.

A member may be removed from office for failing to attend two consecutive Council meetings without showing good cause for the absences. Removal requires joint action by the Directors.

The Directors or their designees, in serving as the Council's co-chairpersons, have no voting rights. Of the voting members, a two-thirds majority is necessary for the Council to act on any matter.

The bill provides for reimbursement of actual and necessary expenses by the Council's members in performing their duties. The expenses are to be shared equally by the Department of Agriculture and Department of Health. Both Departments are authorized by the bill to provide administrative support to the Council.

STATE LABORATORY AND ANALYSIS SERVICES

Coordination between departments

(secs. 901.43, 3701.22, and 3715.02(C))

Under existing law, the Department of Agriculture and Department of Health provide laboratory services for various programs, including food safety. With respect to the chemical and bacteriological laboratory maintained by the Department of Health, the bill modifies the laboratory's general duty to examine

food suspected to be the cause of disease. Under the bill, the laboratory's food safety purpose is specified as follows: analysis of patient specimens and food samples necessary for investigation of foodborne illnesses.

In an investigation of foodborne illness, the bill requires that the Department of Health's laboratory consult with the Director of Agriculture acting under Ohio's Pure Food and Drug Law. The bill likewise requires that the Director of Agriculture cooperate and consult with the Department of Health's laboratory when conducting foodborne illness investigations under the Pure Food and Drug Law.

Fees

(sec. 901.43)

With respect to any of the laboratory services provided by the Department of Agriculture, current law authorizes the Director to charge a fee, except when a service is performed on an "official sample." The bill continues to require that rules be adopted specifying what constitutes an "official sample," but specifies that it includes samples taken for purposes of the retail food establishment and food service operation licensing programs. Thus, no fee may be charged by the laboratory for performing a service on an official sample taken as part of the enforcement of the licensing programs.

Reports on water supplies

(sec. 3701.22)

The bill continues the duty of the Department of Health's laboratory to conduct examinations of public water supplies. It eliminates, however, the duty to report to the Director of Environmental Protection and the public each year the condition of all public water supplies. According to a representative of the Department of Health, the Department no longer participates in this program.

Sample analyses

(sec. 3715.02)

In addition to conferring powers and duties on the Director of Agriculture with respect to the licensing of retail food establishments, the bill continues the Director's duty to conduct inspections of food under the Pure Food and Drug Law, including inspections of food that is "manufactured" or "stored" within Ohio. The bill further requires that the Director adopt rules in accordance with the Administrative Procedure Act that establish procedures for the performance of sample analyses of food, food additives, and food packaging materials. The

circumstances under which a sample analysis of a food, food additive, or food packaging material may be required include the following:

(1) When it is the subject of consumer complaint;

(2) When requested by a consumer after a physician has isolated an organism from the consumer as the physician's patient;

(3) When it is suspected of having caused an illness;

(4) When it is suspected of being adulterated or misbranded;

(5) When it is subject to verification of food labeling and standards of identity;

(6) At any other time the Director considers a sample analysis necessary.

PURE FOOD AND DRUG LAW

Rules by reference

(sec. 3715.02)

For purposes of enforcing Ohio's Pure Food and Drug Law, the Director of Agriculture is required to adopt rules that establish definitions for a food or class of food and standards for the following items as they pertain to a food or class of food: (1) quality, identity, purity, grade, and strength, (2) packaging and labeling, (3) food processing and equipment, (4) processing procedures, and (5) fill of containers. Where applicable, the rules must conform to or be the same as federal regulations pertaining to food.

The bill modifies the rule-making authority of the Director by specifying that the rules establishing standards and definitions of food must conform not only to the federal regulations adopted by the United States Department of Agriculture, but also to the regulations adopted by the United States Food and Drug Administration. In place of the current requirement that the rules conform to or "be the same as" federal regulations adopted for enforcement of the Federal Food, Drug, and Cosmetic Act, the bill specifies that portions of relevant federal regulations may be adopted as state rules by referencing the federal regulations. Adoption of rules in this manner is subject to the approval of the Joint Committee on Agency Rule Review.

MISCELLANEOUS

Technical changes

The following sections of the Revised Code appear in the bill for purposes of changing cross-references to the laws regarding the licensing of food service operations and retail food establishments: secs. 2305.37, 3701.83, 3717.13, 3724.03, 4303.021, 4303.14, 4303.15, 4303.181, 4303.182, 4303.183, 5104.05, 5104.051, 5739.02, and 5739.11. Also included are changes necessary for removal of gender-specific terms.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-03-99	pp. 261-262
Reported, H. Commerce & Labor	05-12-99	p. 644
Passed House (89-5)	05-18-99	pp. 673-675

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