

# Senate Bill 895

Sponsored by Senator WINTERS (at the request of Oregon Restaurant Association)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits local public health authority from requiring menu information unless authority consults with and receives approval from Department of Human Services.

Provides for Director of Human Services to establish inspection frequency for restaurants, bed and breakfasts and commissaries by rule. Requires director to make inspection and evaluation system for commissaries same as system used for restaurants and bed and breakfasts to extent practicable. Requires inspection and evaluation systems to give substantial emphasis to critical violations.

## A BILL FOR AN ACT

1  
2 Relating to food service facilities; creating new provisions; and amending ORS 624.060, 624.085 and  
3 624.370.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 624.**

6 **SECTION 2. A local public health authority may not require the inclusion of any label,**  
7 **warning, advisory or other information on a restaurant, temporary restaurant, commissary**  
8 **or mobile unit menu unless the local public health authority has consulted with and received**  
9 **the approval of the Department of Human Services.**

10 **SECTION 3. ORS 624.060 is amended to read:**

11 624.060. (1) [*At least once every six months*] The Director of Human Services shall inspect every  
12 restaurant [*located within the jurisdiction of the director. At least once a year the director shall*  
13 *inspect*] **and** every bed and breakfast facility [*located within the jurisdiction of the director*] **period-**  
14 **ically as provided by rules adopted by the director.** The person operating the restaurant or bed  
15 and breakfast facility shall, upon the request of the director, permit access to all parts of the es-  
16 tablishment.

17 (2) A copy of each inspection report shall be given to the restaurant or bed and breakfast fa-  
18 cility operator or person in charge of the restaurant or bed and breakfast facility, and another copy  
19 shall be filed with the records of the Department of Human Services.

20 (3) During each inspection, the director shall [*insure*] **ensure** that restaurants or bed and  
21 breakfast establishments that hold valid liquor licenses have properly posted the appropriate sign  
22 required by ORS 471.551.

23 (4) After each inspection, notice regarding compliance with ORS 624.010 to 624.120 by the res-  
24 taurant or bed and breakfast facility shall be posted at the customary entrance of the restaurant  
25 or bed and breakfast facility in public view and [*shall*] **may** not be removed by any person except  
26 the director.

27 (5) If the director discovers the violation of any provision of ORS 624.010 to 624.120, the director  
28 shall make a second inspection after the lapse of such time as the director deems necessary for the  
29 defect to be remedied. [*When*] **If** a violation noted on an inspection has been remedied, that violation

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 *[shall]* **does** not cumulate with violations noted on a second inspection.

2 **SECTION 4.** ORS 624.085 is amended to read:

3 624.085. (1) **As used in this section, “imminent” means impending or likely to develop**  
4 **without delay.**

5 *[(1)]* (2) If the Director of Human Services determines that a critical violation of ORS 624.010  
6 to 624.120, or any rule *[promulgated pursuant thereto]* **adopted under ORS 624.010 to 624.120**, exists  
7 in a restaurant or bed and breakfast facility and the critical violation constitutes a potential danger  
8 to the public health, the director may revoke, suspend or refuse to issue the license required by ORS  
9 624.020 if, after a reasonable time has been given for correction of the violation, but not longer than  
10 14 days, the violation continues to exist. The director shall reinstate a license that has been revoked  
11 or suspended if the director determines that the violation has been corrected.

12 *[(2)]* (3) Notwithstanding ORS 624.020, if the director determines that a critical violation of ORS  
13 624.010 to 624.120, or any rule *[promulgated pursuant thereto]* **adopted under ORS 624.010 to**  
14 **624.120**, exists in a restaurant or bed and breakfast facility and the critical violation constitutes an  
15 imminent or present danger to the public health, the director may order immediate correction, use  
16 of an approved alternative procedure or closure of the restaurant or bed and breakfast facility by  
17 written notice *[thereof]* **of the closure** to the operator. The inspection report carrying a statement  
18 ordering closure and specifying the reasons *[therefor]* **for closure** signed by the director and deliv-  
19 ered to the operator may serve as the written notice of the closure. The director shall use inspection  
20 forms that clearly display notice that procedures are available to the licensee under ORS chapter  
21 183 for appeal of the closure order. A copy of the notice **of the closure** shall be filed with the re-  
22 cords of the Department of Human Services. The closure order shall have the effect of an immediate  
23 revocation of the operator’s license. If requested, the director shall provide a prompt hearing after  
24 the closure in accordance with ORS chapter 183.

25 *[(3)]* (4) If the director determines that closure of the restaurant or bed and breakfast facility  
26 is necessary because failure to correct a critical violation or implement an approved alternative  
27 procedure constitutes a potential danger to the public health, *[ or failure to correct a critical violation*  
28 *or implement an approved alternative procedure constitutes an]* **or an** imminent or present danger to  
29 the public health, the director shall:

30 (a) Notify the owner or person in charge of the restaurant or bed and breakfast facility that  
31 *[such]* **the** restaurant or bed and breakfast facility *[shall]* **may** not be used for food service purposes  
32 until the critical violations specified in the inspection report have been corrected; and

33 (b) Post a notice of closure upon the restaurant or bed and breakfast facility at the customary  
34 entrance to the restaurant or bed and breakfast facility in public view to the effect that the res-  
35 taurant or bed and breakfast facility is closed for operation because a critical violation exists.

36 *[(4)(a)]* (5)(a) *[No]* **A** person *[shall]* **may not** remove a notice of closure from a restaurant or bed  
37 and breakfast facility until the violation *[which]* **that** caused the notice to be posted has been cor-  
38 rected.

39 (b) *[No]* **A** person *[shall]* **may not** operate a restaurant or bed and breakfast facility upon which  
40 a notice of closure has been posted until the violation *[which]* **that** caused the notice to be posted  
41 has been corrected and the notice has been removed.

42 *[(5)]* *The director shall define clearly the criteria and rules for conformance to acceptable food ser-*  
43 *vice practices used to determine the restaurant or bed and breakfast facility sanitation score to insure*  
44 *statewide uniformity in the inspection and licensing processes. Critical violations which constitute a*  
45 *potential danger to the public health and critical violations which constitute an imminent or present*

1 *danger to the public health shall be clearly defined. Minimum acceptable food service standard proce-*  
 2 *dures shall be clearly defined by setting a minimum acceptable sanitation score for a licensed restau-*  
 3 *rant or bed and breakfast facility.]*

4 **(6) The director shall adopt rules that establish acceptable restaurant and bed and**  
 5 **breakfast facility practices and identify criteria for determining compliance with those**  
 6 **practices. The rules and criteria shall apply statewide to restaurant and bed and breakfast**  
 7 **facility inspection and licensing processes. The rules and criteria shall be designed to give**  
 8 **substantial emphasis to the presence or absence of critical violations.**

9 [(6)] (7) If a restaurant or bed and breakfast facility obtains a sanitation [*score of*] **rating that**  
 10 **is less than the minimum acceptable standard, the restaurant or bed and breakfast facility operator**  
 11 **or person in charge of the restaurant or bed and breakfast facility shall be notified of impending**  
 12 **closure if, after reinspection within 30 days, the sanitation [*score*] **rating** does not meet minimum**  
 13 **acceptable food service standards. If closure action is taken after reinspection, the restaurant or bed**  
 14 **and breakfast facility may not be operated until:**

15 **(a) The restaurant or bed and breakfast facility operator submits a plan for correction of the**  
 16 **violations that receives the approval of the director; and**

17 **(b) A subsequent inspection of the restaurant or bed and breakfast facility produces a sanitation**  
 18 **[*score*] **rating** that meets minimum acceptable food service standards.**

19 [(7)] (8) The department may establish a more frequent inspection schedule **under ORS 624.060**  
 20 **for a restaurant [*licensed under ORS 624.020*] that fails to meet specific minimum standards estab-**  
 21 **lished by the department. The department may charge a fee for costs associated with the perform-**  
 22 **ance of additional inspections.**

23 [(8) *As used in this section, "imminent" means impending or likely to develop without delay.*]

24 **SECTION 5.** ORS 624.370 is amended to read:

25 624.370. (1) [*At least once every six months,*] The Director of Human Services shall inspect every  
 26 commissary and warehouse, and a representative number of each operator's mobile units and vend-  
 27 ing machines **periodically as provided by rules adopted by the director.** The director shall be  
 28 granted access at reasonable times to all parts of the commissary and shall have access, either in  
 29 the company of an employee or otherwise, to the interior of all vending machines or mobile units  
 30 of the operator at such times as the director considers necessary to [*insure*] **ensure** compliance with  
 31 the provisions of ORS 624.310 to 624.430.

32 (2) Samples of food, drink and other substances may be taken and examined by the director as  
 33 often as may be necessary for the detection of unwholesomeness or adulteration. The director may  
 34 condemn and prohibit the sale of or cause to be removed or destroyed, any food or drink which  
 35 contains any toxic, contaminated, filthy, putrid, decomposed or diseased substance or if it is other-  
 36 wise unfit for human consumption.

37 **(3) The director shall adopt rules that establish acceptable commissary practices and**  
 38 **identify criteria for determining compliance with those practices. The rules and criteria shall**  
 39 **apply statewide to commissary inspection and licensing processes. To the extent practicable,**  
 40 **the director shall make the inspection and evaluation system for commissaries identical to**  
 41 **the inspection and evaluation system used for restaurants and bed and breakfast facilities.**  
 42 **The rules and criteria shall be designed to give substantial emphasis to the presence or ab-**  
 43 **sence of critical violations.**

44 [(3)] (4) One copy of the inspection report shall be posted by the director upon an inside wall  
 45 of the commissary or placed in the mobile unit. The inspection report shall not be defaced or re-

1 moved by any person except the director. A copy of the inspection report on vending machines shall  
2 be sent to the operator. Another copy of each inspection report shall be filed with the records of  
3 the Department of Human Services.

4 [(4)] (5) If the director discovers the violation of any provision of ORS 624.310 to 624.430 or any  
5 rule [*promulgated thereunder*] **adopted under ORS 624.310 to 624.430**, the director shall make a  
6 second inspection after the lapse of such time as the director considers necessary for the defect to  
7 be remedied.

8 [(5)] (6) If a violation [*is of a nature so as to constitute*] **constitutes** a danger to the health of  
9 the people of this state, the director may order immediate closure of the commissary, mobile unit,  
10 or vending machine and shall, within 24 hours of the time of inspection, mail to or serve personally  
11 on the licensee a copy of the inspection report signed by the director [*showing thereon*] • **that**  
12 **shows** the particular facility closed and the reason. The director shall, if requested, hold a hearing  
13 in accordance with ORS chapter 183.

14 **SECTION 6. Section 2 of this 2007 Act applies to the enforcement on or after the effective**  
15 **date of this 2007 Act of a local public health authority requirement imposed before, on or**  
16 **after the effective date of this 2007 Act.**

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