

A-Engrossed
Senate Bill 188

Ordered by the Senate February 24
Including Senate Amendments dated February 24

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for State Department of Agriculture)

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.

Authorizes State Department of Agriculture to impose civil penalties, not to exceed [*\$25,000*] **\$10,000**, for violations of various food safety laws or related administrative rules.

Reorganizes certain existing penalty provisions to be within relevant chapters. Clarifies classification of undesignated misdemeanor penalties by inserting reference to default classification.

Resolves statutory conflict regarding criminal penalty applicable to violation of livestock industry record inspection statute. Makes violation of statute or related rule punishable by maximum of \$360 fine.

A BILL FOR AN ACT

Relating to penalties imposed for violations of food safety laws; creating new provisions; amending ORS 616.855, 616.875, 616.880, 616.890, 616.992, 619.993, 625.150, 632.620 and 632.990; and repealing ORS 616.996.

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

PENALTY PROVISION REORGANIZATION

SECTION 1. ORS 616.992 is amended to read:

616.992. The [*first*] violation of any provisions of this chapter[, *ORS 632.275 to 632.290, 632.450 to 632.490 and 632.900 to 632.985*] or of any rule [*promulgated pursuant thereto*] **adopted under this chapter** is a Class B misdemeanor **for a first offense**, and a Class A misdemeanor for a second or subsequent offense.

SECTION 2. ORS 632.990 is amended to read:

632.990. [(1) *Violation of any provision of ORS 632.705 to 632.815 is punishable, upon conviction, by a fine of not less than \$10 nor more than \$100 for the first offense, and for each subsequent offense by a fine of not less than \$25 nor more than \$200.*]

[(2)] (1) Violation of ORS 632.216 or 632.226 is punishable, upon conviction, by a fine of not less than \$10 [*nor*] **or** more than \$100, or by imprisonment in the county jail for not less than 10 [*nor*] **days or** more than 30 days, or both.

(2) **Violation of any provision of ORS 632.275 to 632.290 or of any rule adopted under ORS 632.275 to 632.290 is a Class B misdemeanor for a first offense, and a Class A misdemeanor for a second or subsequent offense.**

(3) Violation of any provision of ORS 632.410 to 632.430 is a Class D 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 (4) Violation of any provision of ORS 632.450 to 632.490 or of any rule adopted under ORS
2 632.450 to 632.490 is a Class B misdemeanor for a first offense, and a Class A misdemeanor
3 for a second or subsequent offense.

4 [(4)] (5) Violation of ORS 632.625 is punishable, upon conviction, by a fine of not less than \$10
5 [nor] or more than \$100, or by imprisonment in the county jail for not less than 10 [nor] days or
6 more than 30 days, or both.

7 [(5) Violation of any provision of ORS 632.275 to 632.290, 632.450 to 632.490 and 632.900 to 632.985
8 or of any rule promulgated pursuant thereto is punishable as provided in ORS 616.992.]

9 (6) Violation of any provision of ORS 632.705 to 632.815 is punishable, upon conviction, by
10 a fine of not less than \$10 or more than \$100 for a first offense, and by a fine of not less than
11 \$25 or more than \$200 for a second or subsequent offense.

12 (7) Violation of any provision of ORS 632.900 to 632.985 or of any rule adopted under ORS
13 632.900 to 632.985 is a Class B misdemeanor for a first offense, and a Class A misdemeanor
14 for a second or subsequent offense.

15 **SECTION 3.** ORS 619.993 is amended to read:

16 619.993. Violation of any of the provisions of ORS [576.024,] 619.010 to 619.071 and 619.370, or
17 rules [promulgated thereunder,] adopted under ORS 619.010 to 619.071 or for the enforcement
18 of ORS 619.370 is a Class A misdemeanor.

19
20 **MEAT DEALERS AND SLAUGHTERERS**

21
22 **SECTION 4.** Section 5 of this 2009 Act is added to and made a part of ORS chapter 603.

23 **SECTION 5.** (1) In addition to any penalty available under ORS 561.190 or 603.992, the
24 State Department of Agriculture may impose a civil penalty for a violation of this chapter
25 or of rules adopted under this chapter. For the purposes of this section, each day a violation
26 continues after the period of time established for compliance shall be considered a separate
27 violation unless the department finds that a different period of time is more appropriate to
28 describe a specific violation event.

29 (2) The department may adopt rules establishing a schedule of civil penalties that may
30 be imposed under this section. Civil penalties imposed under this section may not exceed
31 \$10,000 for each violation.

32 (3) When the department imposes a civil penalty under subsection (1) of this section, the
33 department shall impose the penalty in the manner provided by ORS 183.745, except that the
34 written application for a hearing must be received by the department no later than 10 days
35 after the date of mailing or personal service of the notice of civil penalty.

36 (4) Moneys received by the department from civil penalties imposed under this section
37 shall be deposited in the General Fund to the credit of the Department of Agriculture Ac-
38 count.

39
40 **FOODS GENERALLY**

41
42 **SECTION 6.** ORS 616.996 is repealed.

43 **SECTION 7.** ORS 616.855 is amended to read:

44 616.855. ORS 616.850 to 616.890 [and 616.996] do not apply to:

45 (1) Fresh fruits and vegetables.

1 (2) Products sold in quantities of one avoirdupois ounce, or 28.35 grams or one fluid ounce, or
2 less.

3 (3) Packaged consumer commodities that may be lawfully sold only upon the written or oral di-
4 rection of a licensed practitioner. As used in this subsection, "practitioner" has the meaning for the
5 term provided in ORS 689.005.

6 (4) Alcoholic beverages that are subject to the Federal Alcohol Administration Act.

7 (5) Tobacco, cosmetics and personal care products, hardware and household equipment.

8 (6) Products sold in one size limit only, or in such manner that the State Department of Agri-
9 culture determines that no comparison is meaningful.

10 (7) Consumer commodities sold for immediate consumption on the premises.

11 (8) Patent or proprietary medicines.

12 (9) Products sold through coin-operated vending machines or products sold by manual distrib-
13 ution from mobile catering units to individual consumers.

14 **SECTION 8.** ORS 616.875 is amended to read:

15 616.875. (1) In accordance with any applicable provision of ORS chapter 183, the State Depart-
16 ment of Agriculture may promulgate rules for the administration and enforcement of the provisions
17 of ORS 616.850 to 616.890 [and 616.996].

18 (2) A retail establishment or department thereof shall be considered to have gross annual re-
19 cepts from the sale of consumer commodities of \$1.5 million or more as described in ORS 616.850
20 (2), unless the establishment demonstrates to the department that it does not. The determination of
21 the director shall be deemed a final order not in a contested case for purposes of judicial review
22 under ORS chapter 183.

23 **SECTION 9.** ORS 616.880 is amended to read:

24 616.880. Nothing in ORS 616.850 to 616.890 [and 616.996] shall be construed as requiring the
25 State Department of Agriculture to cite incidental or minor violations of ORS 616.860 to 616.870
26 whenever the department believes that the public interest will be served adequately in the circum-
27 stances by issuance of an alleged written warning notice. Each such notice issued shall include the
28 name and address of the grocery store or food market, the date of the notice issuance, a description
29 of the alleged violation and a statement of the penalties for a continued course of violation.

30 **SECTION 10.** ORS 616.890 is amended to read:

31 616.890. ORS 616.850 to 616.890 [and 616.996] may be cited as the Unit Pricing Law.

32 **SECTION 11.** Section 12 of this 2009 Act is added to and made a part of ORS chapter 616.

33 **SECTION 12.** (1) In addition to any penalty available under ORS 561.190, 616.992 or 616.994,
34 the State Department of Agriculture may impose a civil penalty for a violation of this chap-
35 ter or of rules, regulations or standards adopted under this chapter. For the purposes of this
36 section, each day a violation continues after the period of time established for compliance
37 shall be considered a separate violation unless the department finds that a different period
38 of time is more appropriate to describe a specific violation event.

39 (2) The department may adopt rules establishing a schedule of civil penalties that may
40 be imposed under this section. Civil penalties imposed under this section may not exceed
41 \$10,000 for each violation.

42 (3) When the department imposes a civil penalty under subsection (1) of this section, the
43 department shall impose the penalty in the manner provided by ORS 183.745, except that the
44 written application for a hearing must be received by the department no later than 10 days
45 after the date of mailing or personal service of the notice of civil penalty.

1 (4) Moneys received by the department from civil penalties imposed under this section
2 shall be deposited in the General Fund to the credit of the Department of Agriculture Ac-
3 count.

4
5 **MEAT PRODUCTS**
6

7 **SECTION 13.** Section 14 of this 2009 Act is added to and made a part of ORS chapter 619.

8 **SECTION 14.** (1) In addition to any penalty available under ORS 561.190 or 619.993, the
9 State Department of Agriculture may impose a civil penalty for a violation of this chapter
10 or of rules adopted under this chapter. For the purposes of this section, each day a violation
11 continues after the period of time established for compliance shall be considered a separate
12 violation unless the department finds that a different period of time is more appropriate to
13 describe a specific violation event.

14 (2) The department may adopt rules establishing a schedule of civil penalties that may
15 be imposed under this section. Civil penalties imposed under this section may not exceed
16 \$10,000 for each violation.

17 (3) When the department imposes a civil penalty under subsection (1) of this section, the
18 department shall impose the penalty in the manner provided by ORS 183.745, except that the
19 written application for a hearing must be received by the department no later than 10 days
20 after the date of mailing or personal service of the notice of civil penalty.

21 (4) Moneys received by the department from civil penalties imposed under this section
22 shall be deposited in the General Fund to the credit of the Department of Agriculture Ac-
23 count.

24
25 **MILK AND DAIRY PRODUCTS**
26

27 **SECTION 15.** Section 16 of this 2009 Act is added to and made a part of ORS chapter 621.

28 **SECTION 16.** (1) In addition to any penalty available under ORS 561.190 or 621.991, the
29 State Department of Agriculture may impose a civil penalty for a violation of ORS 621.056,
30 621.057, 621.062, 621.070, 621.072, 621.076, 621.084, 621.088, 621.117, 621.122, 621.124, 621.161,
31 621.166, 621.183, 621.198, 621.207, 621.226, 621.259, 621.335, 621.340, 621.345, 621.418, 621.445 or
32 621.730 or of rules, regulations or standards adopted under ORS 621.060, 621.083, 621.096,
33 621.224 or 621.261. For the purposes of this section, each day a violation continues after the
34 period of time established for compliance shall be considered a separate violation unless the
35 department finds that a different period of time is more appropriate to describe a specific
36 violation event.

37 (2) The department may adopt rules establishing a schedule of civil penalties that may
38 be imposed under this section. Civil penalties imposed under this section may not exceed
39 \$10,000 for each violation.

40 (3) When the department imposes a civil penalty under subsection (1) of this section, the
41 department shall impose the penalty in the manner provided by ORS 183.745, except that the
42 written application for a hearing must be received by the department no later than 10 days
43 after the date of mailing or personal service of the notice of civil penalty.

44 (4) Moneys received by the department from civil penalties imposed under this section
45 shall be deposited in the General Fund to the credit of the Department of Agriculture Ac-

1 count.

2
3 SHELLFISH

4
5 **SECTION 17.** Section 18 of this 2009 Act is added to and made a part of ORS chapter 622.

6 **SECTION 18.** (1) In addition to any penalty available under ORS 561.190 or 622.992, the
7 State Department of Agriculture may impose a civil penalty for a violation of ORS 622.010
8 to 622.180 or of rules adopted under ORS 622.180. For the purposes of this section, each day
9 a violation continues after the period of time established for compliance shall be considered
10 a separate violation unless the department finds that a different period of time is more ap-
11 propriate to describe a specific violation event.

12 (2) The department may adopt rules establishing a schedule of civil penalties that may
13 be imposed under this section. Civil penalties imposed under this section may not exceed
14 \$10,000 for each violation.

15 (3) When the department imposes a civil penalty under subsection (1) of this section, the
16 department shall impose the penalty in the manner provided by ORS 183.745, except that the
17 written application for a hearing must be received by the department no later than 10 days
18 after the date of mailing or personal service of the notice of civil penalty.

19 (4) Moneys received by the department from civil penalties imposed under this section
20 shall be deposited in the General Fund to the credit of the Department of Agriculture Ac-
21 count.

22
23 BAKERIES AND BAKERY PRODUCTS

24
25 **SECTION 19.** ORS 625.150 is amended to read:

26 625.150. The State Department of Agriculture shall prescribe reasonable sanitation require-
27 ments, not inconsistent with existing laws or regulations issued thereunder, governing the storing,
28 handling, mixing, preparation, processing, manufacture, transportation and distribution of bakery
29 products, and the design, construction, installation, maintenance, use, care and cleaning of utensils
30 and equipment used therein or in connection therewith. Upon promulgation of any such regulation,
31 any violation thereof is punishable as provided in ORS 625.990 and section 21 of this 2009 Act.
32 Any such regulation may be amended, altered or repealed by the department.

33 **SECTION 20.** Section 21 of this 2009 Act is added to and made a part of ORS chapter 625.

34 **SECTION 21.** (1) In addition to any penalty available under ORS 561.190 or 625.990, the
35 State Department of Agriculture may impose a civil penalty for a violation of ORS 625.010
36 to 625.270 or of rules or regulations adopted under ORS 625.010 to 625.270. For the purposes
37 of this section, each day a violation continues after the period of time established for com-
38 pliance shall be considered a separate violation unless the department finds that a different
39 period of time is more appropriate to describe a specific violation event.

40 (2) The department may adopt rules establishing a schedule of civil penalties that may
41 be imposed under this section. Civil penalties imposed under this section may not exceed
42 \$10,000 for each violation.

43 (3) When the department imposes a civil penalty under subsection (1) of this section, the
44 department shall impose the penalty in the manner provided by ORS 183.745, except that the
45 written application for a hearing must be received by the department no later than 10 days

1 after the date of mailing or personal service of the notice of civil penalty.

2 (4) Moneys received by the department from civil penalties imposed under this section
3 shall be deposited in the General Fund to the credit of the Department of Agriculture Ac-
4 count.

5
6 **REFRIGERATED LOCKER PLANTS**
7

8 **SECTION 22.** (1) In addition to any penalty available under ORS 561.190 or 628.990, the
9 State Department of Agriculture may impose a civil penalty for a violation of ORS 628.210
10 to 628.370 or of rules or regulations adopted under ORS 628.210 to 628.370. For the purposes
11 of this section, each day a violation continues after the period of time established for com-
12 pliance shall be considered a separate violation unless the department finds that a different
13 period of time is more appropriate to describe a specific violation event.

14 (2) The department may adopt rules establishing a schedule of civil penalties that may
15 be imposed under this section. Civil penalties imposed under this section may not exceed
16 \$10,000 for each violation.

17 (3) When the department imposes a civil penalty under subsection (1) of this section, the
18 department shall impose the penalty in the manner provided by ORS 183.745, except that the
19 written application for a hearing must be received by the department no later than 10 days
20 after the date of mailing or personal service of the notice of civil penalty.

21 (4) Moneys received by the department from civil penalties imposed under this section
22 shall be deposited in the General Fund to the credit of the Department of Agriculture Ac-
23 count.

24
25 **AGRICULTURAL AND HORTICULTURAL PRODUCTS**
26

27 **SECTION 23.** ORS 632.620 is amended to read:

28 632.620. Justice courts have concurrent jurisdiction with the circuit court [*in all*] over pro-
29 ceedings under ORS 632.615 and 632.990 to enforce the provisions of ORS 632.516 to 632.625.

30 **SECTION 24.** (1) In addition to any penalty available under ORS 561.190 or 632.990, the
31 State Department of Agriculture may impose a civil penalty for a violation of ORS 632.216,
32 632.226, 632.275 to 632.290, 632.410 to 632.430, 632.450 to 632.490, 632.625, 632.705 to 632.815 or
33 632.900 to 632.985 or of rules adopted under ORS 632.216, 632.226, 632.275 to 632.290, 632.410
34 to 632.430, 632.450 to 632.490, 632.625, 632.705 to 632.815 or 632.900 to 632.985. For the purposes
35 of this section, each day a violation continues after the period of time established for com-
36 pliance shall be considered a separate violation unless the department finds that a different
37 period of time is more appropriate to describe a specific violation event.

38 (2) The department may adopt rules establishing a schedule of civil penalties that may
39 be imposed under this section. Civil penalties imposed under this section may not exceed
40 \$10,000 for each violation.

41 (3) When the department imposes a civil penalty under subsection (1) of this section, the
42 department shall impose the penalty in the manner provided by ORS 183.745, except that the
43 written application for a hearing must be received by the department no later than 10 days
44 after the date of mailing or personal service of the notice of civil penalty.

45 (4) Moneys received by the department from civil penalties imposed under this section

1 shall be deposited in the General Fund to the credit of the Department of Agriculture Ac-
2 count.

3
4 **NONALCOHOLIC BEVERAGES**

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6 **SECTION 25.** Section 26 of this 2009 Act is added to and made a part of ORS chapter 635.

7 **SECTION 26.** (1) In addition to any penalty available under ORS 561.190 or 635.991, the
8 State Department of Agriculture may impose a civil penalty for a violation of this chapter
9 or of rules or regulations adopted under this chapter. For the purposes of this section, each
10 day a violation continues after the period of time established for compliance shall be con-
11 sidered a separate violation unless the department finds that a different period of time is
12 more appropriate to describe a specific violation event.

13 (2) The department may adopt rules establishing a schedule of civil penalties that may
14 be imposed under this section. Civil penalties imposed under this section may not exceed
15 \$10,000 for each violation.

16 (3) When the department imposes a civil penalty under subsection (1) of this section, the
17 department shall impose the penalty in the manner provided by ORS 183.745, except that the
18 written application for a hearing must be received by the department no later than 10 days
19 after the date of mailing or personal service of the notice of civil penalty.

20 (4) Moneys received by the department from civil penalties imposed under this section
21 shall be deposited in the General Fund to the credit of the Department of Agriculture Ac-
22 count.

23
24 **APPLICABILITY**

25
26 **SECTION 27.** (1) Sections 5, 12, 14, 16, 18, 21, 22, 24 and 26 of this 2009 Act, the amend-
27 ments to ORS 616.855, 616.875, 616.880, 616.992, 619.993, 625.150, 632.620 and 632.990 by sections
28 1 to 3, 7 to 9, 19 and 23 of this 2009 Act and the repeal of ORS 616.996 by section 6 of this 2009
29 Act apply to penalties imposed for acts committed on or after the effective date of this 2009
30 Act.

31 (2) The amendments to ORS 616.855, 616.875, 616.880, 616.992, 619.993, 625.150, 632.620 and
32 632.990 by sections 1 to 3, 7 to 9, 19 and 23 of this 2009 Act, and the repeal of ORS 616.996
33 by section 6 of this 2009 Act, do not relieve a person of any obligation with respect to a tax,
34 fee, fine or other charge, interest, penalty forfeiture or other liability, duty or obligation
35 accruing under ORS 616.855, 616.875, 616.880, 616.992, 616.996, 619.993, 625.150, 632.620 or
36 632.990 before the effective date of this 2009 Act or with regard to an act committed before
37 the effective date of this 2009 Act. After the effective date of this 2009 Act the State De-
38 partment of Agriculture may undertake the collection or enforcement of such tax, fee, fine
39 charge, interest, penalty, forfeiture or other liability, duty or obligation.

40
41 **CAPTIONS**

42
43 **SECTION 28.** The unit captions used in this 2009 Act are provided only for the conven-
44 ience of the reader and do not become part of the statutory law of this state or express any
45 legislative intent in the enactment of this 2009 Act.

