

**Enrolled**  
**Senate Bill 188**

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)

CHAPTER .....

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.

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

*[(4)] (5)* Violation of ORS 632.625 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.

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

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

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

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

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

## MEAT DEALERS AND SLAUGHTERERS

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

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

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

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

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

## FOODS GENERALLY

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

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

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

- (1) Fresh fruits and vegetables.
- (2) Products sold in quantities of one avoirdupois ounce, or 28.35 grams or one fluid ounce, or less.
- (3) Packaged consumer commodities that may be lawfully sold only upon the written or oral direction of a licensed practitioner. As used in this subsection, "practitioner" has the meaning for the term provided in ORS 689.005.
- (4) Alcoholic beverages that are subject to the Federal Alcohol Administration Act.
- (5) Tobacco, cosmetics and personal care products, hardware and household equipment.
- (6) Products sold in one size limit only, or in such manner that the State Department of Agriculture determines that no comparison is meaningful.
- (7) Consumer commodities sold for immediate consumption on the premises.
- (8) Patent or proprietary medicines.
- (9) Products sold through coin-operated vending machines or products sold by manual distribution from mobile catering units to individual consumers.

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

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

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

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

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

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

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

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

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

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

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

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

## MEAT PRODUCTS

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

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

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

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

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

#### MILK AND DAIRY PRODUCTS

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

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

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

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

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

#### SHELLFISH

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

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

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

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

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

#### BAKERIES AND BAKERY PRODUCTS

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

625.150. The State Department of Agriculture shall prescribe reasonable sanitation requirements, not inconsistent with existing laws or regulations issued thereunder, governing the storing,

handling, mixing, preparation, processing, manufacture, transportation and distribution of bakery products, and the design, construction, installation, maintenance, use, care and cleaning of utensils and equipment used therein or in connection therewith. Upon promulgation of any such regulation, any violation thereof is punishable as provided in ORS 625.990 and section 21 of this 2009 Act. Any such regulation may be amended, altered or repealed by the department.

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

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

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

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

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

#### REFRIGERATED LOCKER PLANTS

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

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

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

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

#### AGRICULTURAL AND HORTICULTURAL PRODUCTS

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

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

**SECTION 24.** (1) In addition to any penalty available under ORS 561.190 or 632.990, the State Department of Agriculture may impose a civil penalty for a violation of ORS 632.216, 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 632.900 to 632.985 or of rules adopted under ORS 632.216, 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 632.900 to 632.985. For the purposes

of this section, each day a violation continues after the period of time established for compliance shall be considered a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.

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

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

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

#### NONALCOHOLIC BEVERAGES

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

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

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

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

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

#### APPLICABILITY

**SECTION 27.** (1) Sections 5, 12, 14, 16, 18, 21, 22, 24 and 26 of this 2009 Act, the amendments to ORS 616.855, 616.875, 616.880, 616.992, 619.993, 625.150, 632.620 and 632.990 by sections 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 Act apply to penalties imposed for acts committed on or after the effective date of this 2009 Act.

(2) The amendments to ORS 616.855, 616.875, 616.880, 616.992, 619.993, 625.150, 632.620 and 632.990 by sections 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 Act, do not relieve a person of any obligation with respect to a tax, fee, fine or other charge, interest, penalty forfeiture or other liability, duty or obligation accruing under ORS 616.855, 616.875, 616.880, 616.992, 616.996, 619.993, 625.150, 632.620 or 632.990 before the effective date of this 2009 Act or with regard to an act committed before the effective date of this 2009 Act. After the effective date of this 2009 Act the State Department of Agriculture may undertake the collection or enforcement of such tax, fee, fine charge, interest, penalty, forfeiture or other liability, duty or obligation.

#### CAPTIONS

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

---

**Passed by Senate March 2, 2009**

.....  
Secretary of Senate

.....  
President of Senate

**Passed by House May 14, 2009**

.....  
Speaker of House

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

.....  
Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

.....  
Secretary of State