

# Senate Bill 188

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## 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**.

Authorizes State Department of Agriculture to impose civil penalties, not to exceed \$25,000, 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.

(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.**

**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 rection of a licensed practitioner. As used in this subsection, “practitioner” has the meaning for the  
2 term provided in ORS 689.005.

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

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

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

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

8 (8) Patent or proprietary medicines.

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

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

12 616.875. (1) In accordance with any applicable provision of ORS chapter 183, the State Depart-  
13 ment of Agriculture may promulgate rules for the administration and enforcement of the provisions  
14 of ORS 616.850 to 616.890 [*and 616.996*].

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

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

21 616.880. Nothing in ORS 616.850 to 616.890 [*and 616.996*] shall be construed as requiring the  
22 State Department of Agriculture to cite incidental or minor violations of ORS 616.860 to 616.870  
23 whenever the department believes that the public interest will be served adequately in the circum-  
24 stances by issuance of an alleged written warning notice. Each such notice issued shall include the  
25 name and address of the grocery store or food market, the date of the notice issuance, a description  
26 of the alleged violation and a statement of the penalties for a continued course of violation.

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

28 616.890. ORS 616.850 to 616.890 [*and 616.996*] may be cited as the Unit Pricing Law.

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

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

36 (2) The department may adopt rules establishing a schedule of civil penalties that may  
37 be imposed under this section. Civil penalties imposed under this section may not exceed  
38 \$25,000 for each violation.

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

43 (4) Moneys received by the department from civil penalties imposed under this section  
44 shall be paid into the State Treasury and deposited to the credit of the Department of Agri-  
45 culture Account.

## MEAT PRODUCTS

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

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

10 (2) The department may adopt rules establishing a schedule of civil penalties that may  
11 be imposed under this section. Civil penalties imposed under this section may not exceed  
12 \$25,000 for each violation.

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

17 (4) Moneys received by the department from civil penalties imposed under this section  
18 shall be paid into the State Treasury and deposited to the credit of the Department of Agri-  
19 culture Account.

## MILK AND DAIRY PRODUCTS

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

24 **SECTION 16.** (1) In addition to any penalty available under ORS 561.190 or 621.991, the  
25 State Department of Agriculture may impose a civil penalty for a violation of ORS 621.056,  
26 621.057, 621.062, 621.070, 621.072, 621.076, 621.084, 621.088, 621.117, 621.122, 621.124, 621.161,  
27 621.166, 621.183, 621.198, 621.207, 621.226, 621.259, 621.335, 621.340, 621.345, 621.418, 621.445 or  
28 621.730 or of rules, regulations or standards adopted under ORS 621.060, 621.083, 621.096,  
29 621.224 or 621.261. For the purposes of this section, each day a violation continues after the  
30 period of time established for compliance shall be considered a separate violation unless the  
31 department finds that a different period of time is more appropriate to describe a specific  
32 violation event.

33 (2) The department may adopt rules establishing a schedule of civil penalties that may  
34 be imposed under this section. Civil penalties imposed under this section may not exceed  
35 \$25,000 for each violation.

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

40 (4) Moneys received by the department from civil penalties imposed under this section  
41 shall be paid into the State Treasury and deposited to the credit of the Department of Agri-  
42 culture Account.

## SHELLFISH



## 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 \$25,000 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 paid into the State Treasury and deposited 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 \$25,000 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 paid into the State Treasury and deposited 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 \$25,000 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 paid into the State Treasury and deposited 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.