

Senate Bill 710

Sponsored by Senator JOHNSON (at the request of Ken Lucke)

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**.

Establishes annual license program for qualifying temporary restaurants. Allows temporary restaurant holding annual license to operate without obtaining new license for each location at which restaurant operates.

Establishes limits on temporary restaurant annual license fees and on inspection fees for temporary restaurants holding annual licenses.

Prohibits certain grounds for local public health authority refusal to approve facilities or operation of temporary restaurant holding annual license. Requires court to award costs and reasonable attorney fees to temporary restaurant holding annual license that prevails in action for damages arising from local public health authority refusal on prohibited grounds to approve facilities and operation of restaurant.

Requires person inspecting facilities or operation of temporary restaurant or mobile unit to specifically identify exact law, rule or regulation forming basis for refusal to allow operation of temporary restaurant or mobile unit. Requires court to award costs and reasonable attorney fees to prevailing operator if person refusing to allow operation of temporary restaurant or mobile unit does not adequately respond to operator request that person specifically identify exact law, rule or regulation forming basis for refusal or if refusal is based on sham, frivolous or bad faith interpretation of law, rule or regulation.

A BILL FOR AN ACT

Relating to food facilities; creating new provisions; and amending ORS 624.490.

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

SECTION 1. Sections 2 to 4 of this 2011 Act are added to and made a part of ORS 624.010 to 624.121

SECTION 2. (1) Notwithstanding ORS 624.086, an operator of a temporary restaurant that is not a mobile unit may apply to have the temporary restaurant inspected and issued an annual license. A temporary restaurant that holds an annual license issued under this section is exempt from ORS 624.086 (1) to (4) and (6).

(2) A temporary restaurant may be inspected and granted an annual license if:

(a) The operator applying for the license operated the temporary restaurant at four or more locations during the 12 months preceding filing of the application;

(b) The temporary restaurant uses the same major pieces of equipment and essential pieces of equipment, as defined by the Oregon Health Authority, for each location at which the restaurant operates;

(c) The configuration of the temporary restaurant for each location at which the restaurant operates does not vary from the configuration of the restaurant at the time of the licensing inspection, except as allowed under guidelines established by the Oregon Health Authority; and

(d) The temporary restaurant is in conformance with all applicable rules adopted under ORS 624.041.

(3) The fee charged by the Oregon Health Authority for inspection and issuance of a

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 temporary restaurant annual license may not exceed the mobile unit annual license fee au-
2 thorized under ORS 624.490. Notwithstanding ORS 624.510, if the inspection and licensing is
3 performed through a local public health authority, the fee charged by the local public health
4 authority for inspection and issuance of a temporary restaurant annual license may not ex-
5 ceed the approved fee charged by the local public health authority for a mobile unit annual
6 license.

7 (4) An annual license for a temporary restaurant is not transferable. If the operator of
8 a temporary restaurant holding an annual license sells the restaurant, the operator shall
9 surrender the annual license to the issuing health authority for cancellation. In addition to
10 the license, the health authority issuing a temporary restaurant an annual license shall
11 provide documents setting forth the major pieces and essential pieces of equipment for the
12 restaurant and the configuration of the restaurant at the time of the licensing inspection.

13 (5) The operator of a temporary restaurant holding an annual license must notify the
14 Oregon Health Authority or appropriate local public health authority having jurisdiction
15 prior to commencing operations at a new location. Except as provided in this subsection, the
16 operator shall provide the health authority having jurisdiction over the new location evidence
17 that the temporary restaurant holds an annual license and of the equipment and configura-
18 tion information set forth in the documentation described in subsection (4) of this section.
19 If the temporary restaurant is being established at a new location that is in the same juris-
20 diction as the preceding location, the operator is not required to resubmit evidence of the
21 license or the equipment and configuration information. A local public health authority may
22 not require additional or different licenses or information as a condition of establishing the
23 temporary restaurant or of receiving inspection of the facilities and operation of the tempo-
24 rary restaurant.

25 (6) A temporary restaurant with an annual license may not operate at a location for
26 more than 30 days and may not reestablish operations at a location less than 60 days after
27 ending operations at the location. The Oregon Health Authority or local public health au-
28 thority shall conduct at least one inspection of the temporary restaurant facilities and op-
29 eration while the temporary restaurant is operating at a location. The fee for inspecting the
30 temporary restaurant facilities and operation may not exceed the maximum fee charged for
31 inspecting the facilities and operation of a mobile unit as defined in ORS 624.310.

32 (7) A local public health authority may not refuse to approve the facilities or operation
33 of a temporary restaurant that holds a annual license:

34 (a) Based on the use of a major piece of equipment or essential piece of equipment, as
35 defined by the Oregon Health Authority, if the equipment was inspected at the time of annual
36 licensing and the condition of the equipment is in conformance with Oregon Health Authority
37 rules;

38 (b) Based on the configuration of the temporary restaurant unless the configuration has
39 varied from the configuration at the time of licensing inspection in excess of the variance
40 allowed under the guidelines adopted by the Oregon Health Authority;

41 (c) Based upon any local ordinance, rule or regulation requirement that prohibits or
42 prevents a practice expressly allowed under Oregon Health Authority rules;

43 (d) For refusal by the operator to pay fees that are in addition to or higher than the li-
44 cense and inspection fees authorized under subsections (3) and (6) of this section; or

45 (e) For failure of the operator to obtain or provide licenses or information that are ad-

ditional to or different from the licenses and information described in subsection (5) of this section.

SECTION 3. (1) As used in this section, “mobile unit” has the meaning given that term in ORS 624.310.

(2) A person inspecting temporary restaurant or mobile unit facilities or operations on behalf of the Oregon Health Authority or a local public health authority shall keep readily available a printed copy of the federal, state and local laws, rules and regulations applicable to temporary restaurants and mobile units.

(3) If the person determines that the temporary restaurant or mobile unit may not operate due to noncompliance with an applicable law, rule or regulation, upon request of the temporary restaurant or mobile unit operator, the person shall identify with specificity the exact provision of law, rule or regulation with which the temporary restaurant or mobile unit is not compliant and allow the operator to read the printed copy of that provision. Upon request of the temporary restaurant or mobile unit operator, the person shall provide the operator, at the time the determination is made, a written copy of the determination stating that the temporary restaurant or mobile unit may not operate and identifying with specificity the exact provision of law, rule or regulation with which the temporary restaurant or mobile unit is not compliant.

SECTION 4. A court shall award costs and reasonable attorney fees to a prevailing plaintiff:

(1) In an action brought by the operator of a temporary restaurant holding an annual license issued under section 2 of this 2011 Act against a local public health authority for damages arising from a violation of section 2 (7) of this 2011 Act; or

(2) In an action brought by the operator of a temporary restaurant or mobile unit against the Oregon Health Authority or a local public health authority for damages arising from a determination by a person performing inspections under section 3 of this 2011 Act not to allow operation of the temporary restaurant or mobile unit due to noncompliance with a law, rule or regulation, if the court finds that:

(a) The person making the inspection did not adequately respond as described in section 3 of this 2011 Act to a request by the operator of the temporary restaurant or mobile unit to identify with specificity the exact law, rule or regulation forming the basis for the determination; or

(b) The interpretation of the law, rule or regulation by the person making the inspection was a sham, frivolous or bad faith interpretation.

SECTION 5. ORS 624.490 is amended to read:

624.490. (1) The Oregon Health Authority may charge the following fees for the issuance or renewal of licenses:

(a) \$157.50 for a bed and breakfast facility.

(b) \$210 for a limited service restaurant.

(c) For a restaurant in accordance with seating capacity, as follows:

(A) \$367.50 for 0 to 15 seats;

(B) \$414.75 for 16 to 50 seats;

(C) \$472.50 for 51 to 150 seats; and

(D) \$525 for more than 150 seats.

(d) For a temporary restaurant, except as provided in ORS 624.086 and 624.106 and section 2

1 **of this 2011 Act:**

- 2 (A) \$36.75 for an event lasting one day; and
- 3 (B) \$52.50 for an event lasting two days or longer.
- 4 (e) \$262.50 for a commissary.
- 5 (f) \$105 for each warehouse.
- 6 (g) \$131.50 for each mobile unit.
- 7 (h) For vending machines in accordance with the number of machines covered by the license as

8 follows:

- 9 (A) \$26.25 for 1 to 10 machines;
- 10 (B) \$52.50 for 11 to 20 machines;
- 11 (C) \$78.75 for 21 to 30 machines;
- 12 (D) \$105 for 31 to 40 machines;
- 13 (E) \$131.25 for 41 to 50 machines;
- 14 (F) \$157.50 for 51 to 75 machines;
- 15 (G) \$210 for 76 to 100 machines;
- 16 (H) \$367.50 for 101 to 250 machines;
- 17 (I) \$577.50 for 251 to 500 machines;
- 18 (J) \$787.50 for 501 to 750 machines;
- 19 (K) \$966 for 751 to 1,000 machines;
- 20 (L) \$1,260 for 1,001 to 1,500 machines; and
- 21 (M) \$1,575 for more than 1,500 machines.

22 (2) To reinstate a license other than a temporary restaurant license after the expiration date,
23 the operator must pay a reinstatement fee of \$100 in addition to the license fee required under
24 subsection (1) of this section. If the operator reinstates the license more than 30 days after the ex-
25 piration date, the reinstatement fee shall increase by \$100 on the 31st day following the expiration
26 date and on that day of the month in each succeeding month until the license is reinstated.

27 (3) The Oregon Health Authority or a local public health authority may exempt or reduce the
28 license fee for restaurants operated by benevolent organizations, as defined in ORS 624.101, that
29 provide food or beverages primarily to children, the elderly, the indigent or other needy populations
30 if the persons receiving the food or beverages are not required to pay the full cost of the food or
31 beverages.

32 **SECTION 6. The Oregon Health Authority shall complete the adoption of initial rules**
33 **regulating temporary restaurant annual licenses under section 2 of this 2011 Act in time for**
34 **the Oregon Health Authority and local public health authorities to commence the issuance**
35 **of those licenses on or before January 1, 2013.**

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