

Enrolled
House Bill 2059

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for State Department of Agriculture)

CHAPTER

AN ACT

Relating to State Department of Agriculture food establishment licenses; creating new provisions; amending ORS 603.025, 616.706, 619.031, 621.072, 621.166, 625.180, 628.240, 632.720 and 635.030 and section 45, chapter 64, Oregon Laws 2012; and declaring an emergency.

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

SECTION 1. ORS 603.025, as amended by section 36, chapter 64, Oregon Laws 2012, is amended to read:

603.025. (1) A person may not sell, offer to sell or expose for sale meat products or engage in any other activity described or identified in subsection (4) of this section without first obtaining and maintaining a license for that activity from the State Department of Agriculture. All such licenses shall expire on June 30 next following the date of issuance or on such date as may be specified by department rule. Renewal applications must be postmarked before the expiration date to be timely.

(2) Application for a license required by this section shall be made to the department on forms prescribed by the department and shall contain any information the department deems necessary. The license is personal and nontransferable, with a separate license required for each establishment location. A new license is required each time there is a change in ownership, legal entity or establishment location.

(3) In addition to other license requirements of this section, if an applicant for a license under subsection (4)(c) of this section has an average weekly dollar value of meat animal purchases that exceeds \$10,000, the applicant shall submit with the application a surety bond with one or more corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008. The bond or letter of credit shall be in an amount equal to twice the average daily value of meat animal purchases during the preceding calendar year, or the amount of \$20,000, whichever amount is greater. The department shall prescribe the form for the bond or letter of credit. A bond or letter of credit is subject to department approval and must be conditioned upon faithful performance by the licensee of all obligations to the producers of meat animals arising from the sale of meat animals by producers to the licensee.

(4) Each of the following activities must be licensed, and the fee established by the department paid with the license application:

(a) Operation of a meat seller establishment. A license under this [section] **paragraph** allows only the meat products preparation described in ORS 603.010 (8).

(b) Operation of a nonslaughtering processing establishment. A license under this [section] **paragraph** allows selling meat products at the same location without obtaining the license described in paragraph (a) of this subsection.

(c) Operation of a slaughterhouse. A license under this [section] **paragraph** allows selling meat products at the same location without obtaining the license described in paragraph (a) of this subsection.

(d) Operation of a custom slaughtering establishment or custom processing establishment. A license under this [section] **paragraph** does not allow selling meat products without first obtaining and maintaining the license described in paragraph (a) of this subsection.

(e) Operation of a slaughterhouse, custom slaughtering establishment or custom processing establishment wherein only poultry or rabbits are slaughtered or prepared. A license under this [section] **paragraph** allows selling only poultry or rabbit products at the same location without obtaining the license described in paragraph (a) of this subsection.

(5) The license required by this section shall be displayed at all times in a conspicuous manner at the address shown on the license.

(6) The department may adopt rules establishing license fee schedules for establishments licensed under this section. The department may determine the license fee for an establishment based upon the annual gross dollar volume of sales and services by the applicant. In establishing the amount of the license fee for an establishment, the State Department of Agriculture shall use the annual gross dollar volume of sales and services by that establishment within Oregon during the prior calendar year or, if the establishment maintains sales and service records on a fiscal basis, the prior fiscal year. If the establishment applying for an original license or for a renewal license cannot provide the annual gross dollar volume of sales and services for a full calendar year, the department shall base the fee on estimated annual gross sales and services by the establishment. If an establishment whose previous year's fee was determined using an estimated gross sales and services figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual annual gross dollar volume of sales and services by the establishment.

(7) The department may not adopt or enforce a rule under this section establishing a license fee that is higher than the license fee charged for the license year that began July 1, [2018] **2025**, for an establishment of the same type and having the same volume of gross sales and services. Fee schedules adopted under this section may not change the amount of the same license fee more frequently than once each year.

SECTION 2. ORS 616.706, as amended by section 37, chapter 64, Oregon Laws 2012, is amended to read:

616.706. (1) Except as otherwise provided in ORS 616.695 to 616.755, a person may not operate a food establishment without first obtaining and thereafter maintaining a license under this section. A person shall make an application for a license to the State Department of Agriculture on forms prescribed by the department. Each license shall expire on June 30 next following the date of issuance or on such date as may be specified by department rule.

(2) The department may, subject to the applicable provisions of ORS chapter 183, suspend, revoke or refuse to issue a license if the licensee has violated any of the provisions of ORS 616.695 to 616.755 or rules adopted under ORS 616.695 to 616.755.

(3) A license is personal to the applicant and may not be transferred. A new license is necessary if the business entity of the licensee is changed, or if the membership of a partnership is changed, irrespective of whether or not the business name is changed.

(4) The license shall cover all operations of the person licensed, under one entity or ownership. With prior approval of the department, the location of a licensed food establishment, or any part of a licensed food establishment, may be moved without the requirement of a new license if there is no change in the ownership or business entity.

(5) The license shall be posted in a conspicuous place in the main office of the food establishment. Duplicate copies of the license shall be conspicuously posted in branch offices, warehouses and other places owned or operated by the licensee at locations other than the main office. A license is automatically canceled if the food establishment ceases or discontinues operations or business.

(6) The department may adopt rules establishing license fee schedules for a food establishment:

- (a) That is part of a domestic kitchen;
- (b) That is a retail food store;
- (c) That is a warehouse; or
- (d) That is other than part of a domestic kitchen, retail food store or warehouse.

(7) The department may determine the license fee for a food establishment described in subsection (6)(b) to (d) of this section based upon the gross sales by the applicant. In establishing the amount of a license fee based upon gross sales by an applicant, the department shall use the annual gross dollar volume of sales of covered operations by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales records on a fiscal basis, the prior fiscal year. If the applicant applying for an original license or for a renewal license cannot provide the annual gross dollar volume of sales of covered operations for a full calendar year, the department shall base the fee on estimated annual gross sales of covered operations by the applicant. If an applicant whose previous year's fee was determined using an estimated gross sales of covered operations figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross dollar volume of sales of covered operations by the applicant.

(8) The department may not adopt or enforce a rule under this section establishing a license fee that is higher than the license fee charged for the license year that began July 1, [2018] **2025**, for an establishment of the same type and having the same volume of gross sales. License fee schedules adopted under this section may not change the amount of the same license fee more frequently than once each year.

SECTION 3. ORS 619.031, as amended by section 38, chapter 64, Oregon Laws 2012, is amended to read:

619.031. (1) A person may not operate an animal food slaughtering establishment or processing establishment without first obtaining a license for the establishment from the State Department of Agriculture.

(2) The department may adopt rules establishing license fee schedules for establishments licensed under this section. The department may determine the license fee for an establishment based upon the annual gross dollar volume of sales and services by the applicant. In establishing the amount of the license fee for an applicant, the department shall use the annual gross dollar volume of sales and services by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales and service records on a fiscal basis, the prior fiscal year. If the applicant applying for an original license or for a renewal license cannot provide the annual gross dollar volume of sales and services for a full calendar year, the department shall base the fee on estimated annual gross sales and services by the applicant. If an applicant whose previous year's fee was determined using an estimated gross sales and services figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross dollar volume of sales and services by the applicant. The license shall expire on June 30 next following the date of issuance or on such date as may be specified by department rule.

(3) The department may not adopt or enforce a rule under this section establishing a license fee that is higher than the license fee charged for the license year that began July 1, [2018] **2025**, for an establishment of the same type and having the same volume of gross sales and services. Fee schedules adopted under this section may not change the amount of the same license fee more frequently than once each year.

(4) The provisions of ORS 603.025 (2) and (5), 603.034 (1) and (2), 603.045 (7) and 603.075 shall apply to animal food slaughtering establishments or processing establishments. Except as provided in this subsection, the remainder of the provisions of ORS chapter 603 do not apply to such establishments.

(5) Notwithstanding subsection (1) of this section, a person licensed by the department under ORS chapter 603 to slaughter meat animals and subject to federal meat inspection, or a person licensed by the department under ORS chapter 603 to slaughter only poultry and rabbits and subject to federal poultry inspection, or a person licensed by the department under ORS chapter 603 as a nonslaughtering processor may, without being required to obtain an additional license, also sell or

dispose of meat products as animal food provided that such licensees also comply with the provisions of subsection (6) of this section, ORS 619.010 to 619.026 and 619.036 to 619.066.

(6) In accordance with the provisions of ORS chapter 183, the department may promulgate rules necessary to carry out and enforce any procedures or measures to protect the health of the animals that are fed or intended to be fed the meat products sold or disposed of by animal food slaughtering establishments or processing establishments, and to protect the health of other animals in this state. In addition to the provisions of ORS 619.046, for the purposes of this section the department shall take into consideration:

(a) The provisions of ORS chapter 596.

(b) The procedures necessary to ensure that meat products that are only fit for or destined for animal consumption are not sold for human consumption.

(7) A person licensed as provided by this section:

(a) May not sell, hold or offer for sale any carcass of a meat animal or part thereof that is unfit for or unwholesome as animal food.

(b) May not sell, hold or offer for sale a carcass of a meat animal or part thereof for human consumption.

(c) Shall keep complete and accurate records of the meat animals purchased for slaughter, including but not limited to their description, brands if any, date of purchase and the name and address of the person from whom the animals were purchased.

(d) Shall keep complete and accurate records of the sale of all meat animal carcasses or parts of meat animal carcasses, including the name and address of the purchaser.

(e) Shall comply with the provisions of ORS 619.026.

SECTION 4. ORS 621.072, as amended by section 39, chapter 64, Oregon Laws 2012, and section 22, chapter 203, Oregon Laws 2015, is amended to read:

621.072. (1) The State Department of Agriculture shall issue a license to use a grade designation to any person who:

(a) Makes written application for a license on forms provided by the department;

(b) Pays the designated license fee;

(c) Is engaged in the business of producing or distributing fluid milk; and

(d) Meets the requirements of the particular grade designation for which application is made.

(2) If a person carries on the activities of a producer and a producer-distributor, the person must obtain a separate license for each of those activities.

(3) Licenses issued under this section shall be personal and not transferable.

(4) Each milk hauler, milk receiver or other person who grades fluid milk as fit or unfit for processing as fluid milk due to quality, odor, flavor or wholesomeness must first obtain a license from the department authorizing that person to sample and grade fluid milk. Each applicant for a milk sampler's and grader's license shall, by written examination, demonstrate an adequate knowledge of milk sanitation as it relates to the sampling, grading and handling of fluid milk and cream for analysis. The department shall give examinations for licenses at such times and places as appears to be necessary and practicable.

(5) Before and after issuing a license to a person as a producer, producer-distributor, distributor or nonprocessing distributor of fluid milk, the department shall, as it deems necessary, inspect the physical facilities of the applicant's dairy, milk processing plant or distribution center and investigate other factors the department determines may relate to the production, processing or distribution of fluid milk.

(6) Each license issued under this section expires on June 30 next following the date of its issuance unless sooner revoked and may be renewed upon application of the licensee. Each application for a license or annual renewal of a license shall be accompanied by a license fee.

(7) The department may adopt rules establishing license fee schedules for:

(a) Milk samplers and graders;

(b) Producer-distributors, distributors and nonprocessing distributors; and

(c) Producers.

(8) The department may determine the license fee for a producer-distributor, distributor or nonprocessing distributor based upon the annual gross dollar volume of sales and services by the applicant. In establishing the amount of the license fee for an applicant under this subsection, the department shall use the annual gross dollar volume of sales and services by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales and service records on a fiscal basis, the prior fiscal year. If the applicant applying for an original license or for a renewal license cannot provide the annual gross dollar volume of sales and services for a full calendar year, the department shall base the fee on estimated annual gross sales and services by the applicant. If an applicant whose previous year's fee was determined using an estimated gross sales and services figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross dollar volume of sales and services by the applicant.

(9) The department may determine the license fee for a producer based upon the annual gross sales by the applicant. In establishing the amount of the license fee for an applicant under this subsection, the department shall use the annual gross sales by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales records on a fiscal basis, the prior fiscal year. If the applicant applying for an original license or for a renewal license cannot provide the annual gross sales for a full calendar year, the department shall base the fee on estimated annual gross sales by the applicant. If an applicant whose previous year's fee was determined using an estimated gross sales figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross sales by the applicant.

(10) The department may not adopt or enforce a rule under this section establishing a license fee for a milk sampler and grader that is higher than the license fee charged for the license year that began July 1, [2018] **2025**, for a milk sampler and grader. The department may not adopt or enforce a rule under this section establishing a license fee for a producer-distributor, distributor or nonprocessing distributor that is higher than the license fee charged for the license year that began July 1, [2018] **2025**, for a producer-distributor, distributor or nonprocessing distributor having the same volume of gross sales and services. The department may not adopt or enforce a rule under this section establishing a license fee for a producer that is higher than the license fee charged for the license year that began July 1, [2018] **2025**, for a producer having the same volume of gross sales. Fee schedules adopted under this section may not change the amount of the same license fee more frequently than once each year.

(11) A distributor or producer-distributor must obtain a license and pay license fees for each physical facility used to produce, process or distribute fluid milk. A person is not required to obtain a distributor or producer-distributor license to act as a milk hauler or to operate receiving or transfer stations in conjunction with a milk processing plant.

(12) The department may refuse to issue or renew, or may suspend or revoke, a license for any violation of this section or ORS 621.062, 621.070, 621.076, 621.084, 621.088, 621.117, 621.122 or 621.259 or processes or standards established under ORS 621.060 or 621.083.

SECTION 5. ORS 621.166, as amended by section 40, chapter 64, Oregon Laws 2012, is amended to read:

621.166. (1) As used in this section, "mobile milk tanker" means a tank or other receptacle that attaches to a bulk tank truck or other equipment and is used to transport fluid milk, milk or milk products.

(2) Application for a dairy products plant license shall be made to the State Department of Agriculture on forms provided by the department. Each license and each annual renewal shall expire on June 30 next following its issuance or on such date as may be specified by department rule. Dairy products plant licenses are personal and are not transferable.

(3) Each dairy products plant shall submit a separate fee established by the department for each mobile milk tanker. The fee does not apply to a mobile milk tanker owned and operated by a dairy products plant while transporting dairy products from the dairy products plant to wholesale or retail outlets for those products.

(4) The department may adopt rules establishing license fee schedules for:

- (a) Mobile milk tankers; and
- (b) Dairy products plants.

(5) The department may determine the license fee for a dairy products plant based upon the annual gross dollar volume of sales and services by the applicant. In establishing the amount of the license fee for an applicant, the department shall use the annual gross dollar volume of sales and services by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales and service records on a fiscal basis, the prior fiscal year. If the applicant applying for an original license or for a renewal license cannot provide the annual gross dollar volume of sales or services for a full calendar year, the department shall base the fee on estimated annual gross sales and services by the applicant. If an applicant whose previous year's fee was determined using an estimated gross sales and services figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross dollar volume of sales and services by the applicant.

(6) The department may not adopt or enforce a rule under this section establishing a license fee for a mobile milk tanker that is higher than the license fee charged for the license year that began July 1, [2018] **2025**, for an equivalent mobile milk tanker. The department may not adopt or enforce a rule under this section establishing a license fee for a dairy products plant that is higher than the license fee charged for the license year that began July 1, [2018] **2025**, for a dairy products plant having the same volume of gross sales and services. Fee schedules adopted under this section may not change the amount of the same license fee more frequently than once each year.

SECTION 6. ORS 625.180, as amended by section 41, chapter 64, Oregon Laws 2012, is amended to read:

625.180. (1) Every bakery or bakery distributor doing business in this state shall pay a license fee.

(2) The State Department of Agriculture may adopt rules establishing license fee schedules for:

- (a) A bakery distributor;
- (b) A domestic kitchen bakery; and
- (c) A bakery other than a domestic kitchen bakery.

(3) The department may determine the license fee for a bakery or bakery distributor based upon the annual gross sales by the applicant. In establishing the amount of the license fee for a bakery or bakery distributor, the department shall use the annual gross sales by that bakery or distributor within Oregon during the prior calendar year or, if the bakery or distributor maintains sales records on a fiscal basis, the prior fiscal year. If the bakery or distributor applying for an original license or for a renewal license cannot provide the annual gross sales for a full calendar year, the department shall base the fee on estimated annual gross sales by the bakery or distributor. If a bakery or distributor whose previous year's fee was determined using an estimated gross sales figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross sales by the bakery or distributor.

(4) The department may not adopt or enforce a rule under this section establishing a license fee for a bakery distributor that is higher than the license fee charged for the license year that began July 1, [2018] **2025**, for a bakery distributor having the same volume of gross sales. The department may not adopt or enforce a rule under this section establishing a license fee for a bakery that is higher than the license fee charged for the license year that began July 1, [2018] **2025**, for a bakery of the same type and having the same volume of gross sales. Fee schedules adopted under this section may not change the amount of the same license fee more frequently than once each year.

SECTION 7. ORS 628.240, as amended by section 42, chapter 64, Oregon Laws 2012, is amended to read:

628.240. (1) An applicant for a refrigerated locker plant license shall pay a license fee to the State Department of Agriculture. The department may adopt rules establishing a license fee for a refrigerated locker plant. The department may not adopt or enforce a rule under this section establishing a license fee for a refrigerated locker plant that is higher than the license fee charged for the license year that began July 1, [2018] **2025**, for a refrigerated locker plant. The department

may not change the amount of the refrigerated locker plant license fee more frequently than once each year.

(2) If the license is issued after January 1 but before June 30 of the same year, the license fee shall be one-half of the fee established by the department by rule under subsection (1) of this section.

(3) All fees received by the department under ORS 628.210 to 628.370 shall be deposited in the Department of Agriculture Service Fund and are continuously appropriated to the department for the purpose of administering and enforcing those sections.

SECTION 8. ORS 632.720, as amended by section 43, chapter 64, Oregon Laws 2012, is amended to read:

632.720. An applicant for an egg handler's license shall pay an annual license fee to the State Department of Agriculture with each application. The department may adopt rules establishing a license fee for an egg handler. The department may not adopt or enforce a rule under this section establishing an egg handler license fee that is higher than the egg handler license fee charged for the license year that began July 1, [2018] **2025**. The department may not change the amount of the egg handler's license fee more frequently than once each year.

SECTION 9. ORS 635.030, as amended by section 44, chapter 64, Oregon Laws 2012, is amended to read:

635.030. (1) Any person desiring to or who does engage in the business of a nonalcoholic beverage manufacturer shall apply to the State Department of Agriculture for a license for each plant operated by such person. The application shall be in such form and contain such information as the department may prescribe.

(2) The department may adopt rules establishing license fee schedules for nonalcoholic beverage manufacturers. The department may determine the license fee for a manufacturer based upon the annual gross sales by the manufacturer. In establishing the amount of the license fee for a manufacturer, the department shall use the annual gross sales by that manufacturer within Oregon during the prior calendar year or, if the manufacturer maintains sales records on a fiscal basis, the prior fiscal year. If the manufacturer applying for an original license or for a renewal license cannot provide the annual gross sales for a full calendar year, the department shall base the fee on estimated annual gross sales by the manufacturer. If a manufacturer whose previous year's fee was determined using an estimated gross sales figure applies for renewal of that license, the fee for the previous license year shall be adjusted to reflect the actual gross sales by the manufacturer.

(3) The department may not adopt or enforce a rule under this section establishing a license fee that is higher than the license fee charged for the license year that began July 1, [2018] **2025**, for a nonalcoholic beverage manufacturer having the same volume of gross sales. Fee schedules adopted under this section may not increase the amount of the same license fee more frequently than once each year.

(4) Licenses issued under this section shall expire on June 30 next following the date of issuance or on such date as may be specified by department rule. The department shall collect a license fee for each license and for each renewal of a license. The fee shall be remitted by the department to the State Treasurer. The State Treasurer shall place all moneys received under this section in the Department of Agriculture Service Fund. Moneys from fees imposed under this section are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this chapter.

SECTION 10. Section 45, chapter 64, Oregon Laws 2012, is amended to read:

Sec. 45. The amendments to ORS 603.025, 616.706, 619.031, 621.072, 621.166, 625.180, 628.240, 632.720 and 635.030 by sections 36 to 44, **chapter 64, Oregon Laws 2012**, [of this 2012 Act] become operative July 1, [2019] **2026**.

SECTION 11. If this 2019 Act does not become law until after June 30, 2019:

(1) The Legislative Assembly intends that the amendments to ORS 603.025, 616.706, 619.031, 621.072, 621.166, 625.180, 628.240, 632.720 and 635.030 and section 45, chapter 64, Oregon Laws 2012, by sections 1 to 10 of this 2019 Act shall operate retroactively to June 30, 2019; and

(2) All fee increases between July 1, 2019, and the effective date of this 2019 Act adopted in accordance with ORS 603.025, 616.706, 619.031, 621.072, 621.166, 625.180, 628.240, 632.720 and 635.030 as operative on June 30, 2019, are ratified and approved.

SECTION 12. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by House May 28, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 6, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State