

Enrolled House Bill 2256

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Human Services)

CHAPTER

AN ACT

Relating to food service facilities; creating new provisions; amending ORS 624.010, 624.020, 624.130, 624.310, 624.320, 624.430, 624.510, 624.570, 624.670 and 624.992; repealing ORS 624.440; appropriating money; and prescribing an effective date.

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

SECTION 1. A licensed limited service restaurant operating immediately prior to the effective date of the amendments to ORS 624.010 by section 3 of this 2001 Act may continue to be licensed as a limited service restaurant while the restaurant:

(1) Continues to be owned or operated by the person that owned or operated the restaurant immediately prior to the effective date of the amendments to ORS 624.010 by section 3 of this 2001 Act; and

(2) Continues to serve only items that qualified the restaurant as limited service and were offered by the restaurant immediately prior to the effective date of the amendments to ORS 624.010 by section 3 of this 2001 Act.

SECTION 2. ORS 624.570, 624.650 and 624.992 are added to and made a part of ORS chapter 624.

SECTION 3. ORS 624.010, as amended by section 38, chapter 351, Oregon Laws 1999, is amended to read:

624.010. As used in ORS 624.010 to 624.120, unless the context requires otherwise:

(1) "Assistant director" means the Assistant Director for Health or an authorized representative.

(2) "Bed and breakfast facility" means any establishment located in a structure designed for a single family residence and structures appurtenant thereto, regardless of whether the owner or operator of the establishment resides in any of the structures, that:

(a) Has more than two rooms for rent on a daily basis to the public; and

(b) Offers a breakfast meal as part of the cost of the room.

(3) "Division" means the Health Division of the Department of Human Services.

(4) "Limited service restaurant" means a restaurant serving only [*prewrapped sandwiches, or a single dish or food product,*] **individually portioned prepackaged foods prepared from an approved source by a commercial processor** and nonperishable beverages.

(5) "Restaurant" includes any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable

form for service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities or temporary restaurants as defined in subsection (6) of this section.

(6) "Temporary restaurant" means any establishment operating temporarily in connection with any fair, carnival, circus or similar public gathering or entertainment, food product promotion or any other event where food is prepared or served for consumption by the public. "Temporary restaurant" does not include:

(a) An establishment where food is prepared and served by a fraternal, social or religious organization only to its own members and guests.

(b) An approved school lunchroom where food is prepared and served for school and community activities, where the preparation and service are under the direction of the school lunchroom supervisor.

(c) A food product promotion where only samples of a food or foods are offered to demonstrate the characteristics of the food product. For the purposes of this paragraph, a sample shall not include a meal, an individual hot dish or a whole sandwich.

(d) A private residence, or part thereof, including the grounds, areas and facilities held out for the use of the occupants generally, for which a temporary sales license is issued under ORS 471.190 for a period not exceeding one day.

SECTION 4. ORS 624.020 is amended to read:

624.020. (1) *[No person shall]* **A person may not** operate a restaurant or bed and breakfast facility without a license to do so from the Health Division. *[The license shall be posted in a conspicuous place on the premises of the licensee.]*

(2) Application for the license shall be in writing in the form prescribed by the division and shall contain the name and address of the applicant and any other information *[which]* **that** the division may require. *[All licenses issued under this section terminate and are renewable on December 31 of each year.]* **A license expires annually on December 31.**

[(3) A license issued under ORS 624.010 to 624.120 that is not renewed on or before the expiration date of the license is delinquent. If the delinquency extends 30 days or more past the expiration date, the licensee shall pay a delinquency fee in addition to the renewal fee required in subsection (4) of this section. The delinquency fee shall be equal to 50 percent of the license renewal fee and shall be increased by 50 percent of the license renewal fee on the first day of each succeeding month in which the license is not renewed.]

(3) To reinstate a license after the December 31 expiration, the applicant must pay a reinstatement fee of \$100 in addition to the license fee required under subsection (4) of this section. If the applicant reinstates the license after January 31, the reinstatement fee shall increase by \$100 on the first day of each succeeding month until the license is reinstated.

(4) *[Every applicant for a license issued under subsection (1) of this section or for renewal of the license]* **An applicant for issuance or reinstatement of a license** shall pay a fee to the Health Division. *[The fees shall be in the following amounts]* **as follows:**

(a) *[\$95]* **\$150** for a bed and breakfast facility;

(b) *[\$100]* **\$200** for a limited service restaurant; and

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

(A) *[\$275]* **\$350** for 0-15 seats;

(B) *[\$295]* **\$395** for 16-50 seats;

(C) *[\$350]* **\$450** for 51-150 seats; and

(D) *[\$395]* **\$500** for more than 150 seats.

(5) The division may exempt or reduce the license fee for restaurants operated by benevolent organizations, as defined by ORS 624.015, *[and which]* **that** provide food or beverage primarily to children, the elderly, the indigent or other needy populations, *[and where such]* **if the** persons are not required to pay the full cost of the food or beverage. *[Such]* Exemptions *[are]* **or** reductions in fees by the division *[and shall not be]* **are not** binding upon *[any]* **a** delegate county *[which]* **that** has a current fee ordinance.

(6) The Assistant Director for Health may suspend, deny or revoke any license [issued under this section] for violation of any of the applicable provisions of ORS 624.010 to 624.120 or any rule adopted under ORS 624.010 to 624.120.

(7) Procedures for denial, revocation or suspension of a license [shall be] **are** as provided in ORS 183.310 to 183.550.

(8) **The licensee shall post** evidence of the license [shall be posted by the assistant director] **in public view** at the customary entrance of the restaurant or bed and breakfast facility [in public view, and the license shall not be defaced or removed by any person except the assistant director]. **A person other than the assistant director may not deface or remove evidence of a license.**

(9) A license [issued under ORS 624.010 to 624.120] is not transferable. The division [shall] **may** not issue a refund representing any unused portion of a license.

SECTION 4a. ORS 624.130 is amended to read:

624.130. (1) Any restaurant where food is served to be consumed on the premises shall require that its food service employees, within a reasonable time after date of employment [or October 4, 1977], be trained to administer emergency first aid to relieve any person choking on food particles pursuant to a training program approved by the county health officer or as described in Red Cross Manual 32-1138 as the "abdominal thrust" procedures.

(2) The county board of health shall provide or cause to be provided the necessary training program at reasonable intervals, as determined by the county board. **The county board must provide for the training requirement of this section to be met by inclusion of the necessary training in a food handler training program under ORS 624.570 or by the placement of posters in the workplace.**

(3) [For such training] The county board of health may charge reasonable fees to cover actual expenses of providing **the** training and issuing verification of training.

(4) The county board of health may waive in writing the training requirements of this section in cases of undue hardship, or where the county board determines that the employee's assignment renders such training impracticable or unnecessary.

(5) [No] Civil or criminal liability to the restaurant or its employees [shall] **may not** result from good faith application by a trained person of the first aid described under subsection (1) of this section.

SECTION 5. ORS 624.310 is amended to read:

624.310. As used in ORS 624.310 to 624.440 unless the context requires otherwise:

(1) "Approved" means approved by the administrator.

(2) "Commissary" means commissary catering establishment, restaurant or any other place in which food, beverage, ingredients, containers or supplies are kept, handled, prepared or stored, and from which vending machines or mobile units are serviced.

(3) "Division" means the Health Division of the Department of Human Services.

(4) "Employee" means any operator or any person employed by an operator who handles any food, beverage, or ingredient to be dispensed through vending machines or mobile units, or who comes into contact with product contact surfaces of the container, equipment, utensils or packaging materials, used in connection with vending machines or mobile unit operations, or who otherwise services or maintains one or more such machines or units.

(5) "Food" means any raw, cooked or processed edible substance, beverage or ingredient used or intended for use in whole, or in part, for human consumption.

(6) "Assistant director" means the Assistant Director for Health.

(7) "Machine location" means the room, enclosure, space or area where one or more vending machines are installed and are in operation.

(8) "Mobile unit" means any vehicle on which food is prepared, processed or converted or which is used in selling and dispensing food to the ultimate consumer.

(9) "Operator" means any person, who by contract, agreement or ownership is responsible for **operating a commissary or warehouse or** furnishing, installing, servicing, operating or maintaining one or more vending machines or mobile units.

(10) "Person" means any individual, partnership, corporation, company, firm, institution, association or any other public or private entity.

(11) "Product contact surface" means any surface of the vending machine or mobile unit, appurtenance or container which comes into direct contact with any food, beverage or ingredient.

(12) "Readily perishable food" means any food, beverage or ingredient consisting in whole or in part of milk, milk products, eggs, meat, fish, poultry, or any other food capable of supporting rapid and progressive growth of microorganisms which can cause food infections or food intoxications. However, "readily perishable food" does not include products in hermetically sealed containers processed by heat to prevent spoilage or dehydrated, dry or powdered products which are so low in moisture content as to preclude development of microorganisms.

(13) "Single-service article" means any utensil, container, implement or wrapper intended for use only once in the preparation, storage, display, service or consumption of food or beverage.

(14) "Utensil" means any kitchenware, tableware, glassware, cutlery, container, cleaning brush or other equipment that comes into contact with food or product contact surfaces during cleaning of vending machines, mobile units or commissary equipment, or during storage, preparation, serving, dispensing or consumption of food.

(15) "Vending machine" means any self-service device offered for public use which, upon insertion of a coin, coins, currency or token, or by other means, dispenses unit servings of food or beverage, either in bulk or package, without the necessity of replenishing the device between each vending operation.

(16) "Warehouse" means any place where food, utensils, single-service articles, cleaning or servicing supplies for vending machines, mobile units or commissaries are stored.

SECTION 6. ORS 624.320 is amended to read:

624.320. (1) *[After January 1, 1964, no person shall]* **A person may not** operate a vending machine, **warehouse**, commissary or mobile unit without first procuring a license to do so from the Health Division. The **operator shall post the** license *[shall be posted]* in a conspicuous place in the **warehouse or** commissary. **The operator shall affix** a card, emblem or other device clearly showing the name and address of the licensee and the serial number of the license *[shall be affixed]* to each vending machine or mobile unit as the case may be.

(2) Application for the license shall be in writing in the form prescribed by the division and shall contain the following information:

- (a) Name and address of the applicant.
- (b) Location of all **warehouses or** commissaries.
- (c) Locations where supplies are kept.
- (d) Locations where vending machines or mobile units are stored, repaired or renovated.
- (e) Identity and form of food to be dispensed through vending machines.
- (f) Number of each type of vending machine on location.

(3) **The operator must keep the** specific locations of the vending machines and specific itineraries of the mobile units *[shall be]* on file at the operator's business office and *[shall be]* readily available to the division. The **operator shall furnish the division with written** details of the conversion of any vending machine to dispense products other than those for which the license was issued *[shall be furnished in writing to the division]*.

SECTION 7. ORS 624.430 is amended to read:

624.430. (1) Every applicant for a license to operate a commissary, vending machine, warehouse or mobile unit shall pay to the Health Division an annual fee in the following amounts:

	Annual fee
(a) Each commissary	<i>[\$195]</i> \$250
(b) Each warehouse	<i>[\$ 50]</i> \$100
(c) Each mobile <i>[units]</i> unit	<i>[\$ 75]</i> \$125
(d) Vending machines as follows:	

Number of [units] [or] machines	Annual fee
1 - 10	\$ 25
11 - 20	\$ 50
21 - 30	\$ 75
31 - 40	\$ 100
41 - 50	\$ 125
51 - 75	\$ 150
76 - 100	\$ 200
101 - 250	\$ 350
251 - 500	\$ 550
501 - 750	\$ 750
751 - 1,000	\$ 920
1,001 - 1,500	\$ 1,200
1,501 - 2,000 or more	\$ 1,500

(2) All licenses issued under ORS **624.320** [624.310 to 624.440 shall terminate and be renewable] **expire** annually on a date set by **division** rule. [Such licenses shall not be transferable, nor shall refunds be made on the unused portions of license or upon] **A license is not transferable. The division may not issue a refund representing any unused portion of a license. The division may not refund fees submitted with applications that have been denied.**

(3) **To reinstate a license after the expiration date, the operator must pay a reinstatement fee of \$100 in addition to the license fee required under subsection (1) of this section. If the operator reinstates the license more than 30 days after the expiration date, the reinstatement fee shall increase by \$100 on the 31st day following the expiration date and on that day of the month in each succeeding month until the license is reinstated.**

SECTION 8. ORS 624.510 is amended to read:

624.510. (1) The Assistant Director for Health shall delegate to any county board of commissioners which requests any of the authority, responsibilities and functions of the Assistant Director for Health under ORS 624.010 to 624.120, [and] 624.310 to 624.440, **624.650 and 624.992** if the assistant director determines that the county is able to carry out the rules of the Health Division relating to fee collection, licensing, inspections, enforcement, **civil penalties** and issuance and revocation of permits and certificates in compliance with standards for enforcement by the counties and monitoring by the division. Such standards shall be established by the division in consultation with the appropriate county officials and in accordance with ORS 431.345. The division shall review and monitor each county's performance under this subsection. The review shall include criteria to determine if provisions of ORS 624.085 are uniformly applied to all licensees within the county. In accordance with ORS 183.310 to 183.550, the assistant director may suspend or rescind a delegation under this subsection. If it is determined that a county is not carrying out such rules or the delegation is suspended, the unexpended portion of the fees collected under subsection (2) of this section shall be available to the division for carrying out the authority, responsibility and functions under this section.

(2) Except as provided in subsections (4) and (5) of this section, the county may determine the amount of, and retain, any fee for any function undertaken pursuant to subsection (1) of this section or use the fee schedules pursuant to ORS 624.020, 624.025 and 624.430.

(3) The division, after consultation with the Oregon Coalition of Local Health Officials and the Oregon Restaurant Association, shall by rule adopt a formula for calculating allowable costs for licenses issued under ORS 624.010 to 624.120. The formula shall include, but not be limited to, expenses related to administration, program costs, salaries, travel expenses and division consultation fees. The formula shall be one of the standards for delegation of health enforcement authority under subsection (1) of this section to counties that establish fees above the amounts set forth in ORS 624.020 (4).

(4) Any county that proposes to increase its fees above the amounts set forth in ORS 624.020 (4) must document that revenues generated by the proposed fee are not in excess of the formula adopted under subsection (3) of this section and are necessary to recover allowable costs pursuant to the formula.

(5) The division, after consultation with the Oregon Coalition of Local Health Officials, shall by rule assess a remittance from each county to which health enforcement authority has been delegated under subsection (1) of this section. The remittance shall supplement existing funds for consultation services and development and maintenance of the statewide food service program. The division shall consult with the Oregon Coalition of Local Health Officials and the Oregon Restaurant Association in developing the statewide food service program.

(6) In any action, suit or proceeding arising out of county administration of functions pursuant to subsection (1) of this section and involving the validity of a rule promulgated by the division, the division shall be made a party to the action, suit or proceeding.

SECTION 8a. ORS 624.570 is amended to read:

624.570. (1)(a) Except as provided in subsection (7) of this section, any person involved in the preparation or service of food in a restaurant or food service facility licensed under ORS 624.020 or 624.320 must successfully complete a food handler training program and earn a certificate of program completion within 30 days after the date of hire. The person shall thereafter maintain a valid completion certificate at all times during the employment.

(b) A food handler training program offered by a county or the Health Division, or offered by a private training entity and approved by a county or the division, is valid in any county of the state for the purpose of obtaining the certificate of completion under subsection (2) of this section.

(2) If a person successfully completes the food handler training program required in subsection (1) of this section and pays the appropriate fee, the county or the [Health] division shall issue a certificate of completion. **A certificate of completion issued by a county or the division is valid in any county of the state.** A food handler certificate of completion [shall expire] **expires** three years after the date of issuance.

(3) All delegate counties, as described in ORS 624.510, shall establish and maintain food handler training programs. The division shall establish and maintain food handler training programs in counties without authority delegated under ORS 624.510.

(4) A person holding a food handler certification issued under a county ordinance containing requirements at least equal to the requirements established by the division, as determined by the division, [shall be considered to be] **is** in compliance with the requirements of subsection (1) of this section.

(5) The division shall establish by rule all provisions necessary to administer and enforce the provisions of this section, including but not limited to:

(a) Minimum standards for program content and delivery; and

(b) The establishment of minimum requirements for successful completion of the training.

(6) The division shall and a delegate county may charge a program fee to program participants. The fee [shall] **may** not exceed \$10. A fee not exceeding \$5 may be charged for duplicate certificates of completion.

(7) Persons involved in the preparation or service of food in a temporary restaurant are not required to complete a food handler training program, but the temporary restaurant shall have at least one person who has completed the food handler training program on the premises at all times.

SECTION 9. ORS 624.670 is amended to read:

624.670. All moneys received by the Health Division of the Department of Human Services under ORS [624.020, 624.025, 624.430 or 624.510] **chapter 624** shall be paid into the State Treasury, deposited in the General Fund to the credit of the Health Division Account and used exclusively by the division for the purpose of carrying out the provisions of this chapter.

SECTION 10. ORS 624.992 is amended to read:

624.992. (1) In addition to any other penalty provided by law, the Health Division may impose a civil penalty on any person for violation of ORS 624.020 (1), 624.060 (1), 624.060 (4), 624.070, 624.085, **624.320, 624.370, 624.380 or 624.430** or rules adopted under ORS 624.010 to 624.120 or **624.390**.

(2) After public hearing, the Health Division by rule shall adopt objective criteria for establishing the civil penalty that may be imposed under subsection (1) of this section.

(3) Civil penalties under subsection (1) of this section shall be imposed in the manner provided by ORS 183.090.

(4) A county board of commissioners delegated civil penalty authority under ORS 624.510 shall implement that authority in accordance with protocols and limits established by the Health Division by rule. The board's civil penalty authority shall apply only to imminent and present dangers to public health and to operation without a license.

SECTION 11. ORS 624.440 is repealed.

SECTION 12. (1) The Health Division may apply the license fees established in ORS 624.020 and 624.430 as amended by sections 4 and 7 of this 2001 Act to license applications and payments received before January 1, 2002, for licensing periods beginning on or after January 1, 2002.

(2) Except as provided in subsection (1) of this section, sections 1 and 2 of this 2001 Act, the amendments to ORS 624.010, 624.020, 624.130, 624.310, 624.320, 624.430, 624.510, 624.570, 624.670 and 624.992 by sections 3 to 10 of this 2001 Act and the repeal of ORS 624.440 by section 11 of this 2001 Act become operative January 1, 2002.

SECTION 13. This 2001 Act takes effect November 1, 2001.

Passed by House June 30, 2001

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Chief Clerk of House

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Speaker of House

Passed by Senate July 3, 2001

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President of Senate

Received by Governor:

.....M.,....., 2001

Approved:

.....M.,....., 2001

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2001

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Secretary of State