

| Summer 2011 |

# CONFIDENTIAL BULLETIN

A hospitality operations resource published by the Oregon Restaurant & Lodging Association.

▶ 2	4	5	6	6	8
NRA Concerned, Disappointed Over Federal Reserve's Decision On Swipe-Fee Reform.	NRA Supports Comprehensive Immigration Reform	Tip Pooling Update!	Waiving Meal Periods	Teen Hiring: A Few Legal Reminders	SB 878: No Longer Requires Training for "ID Checkers"

## Oregon Reconnects To The Federal Tax Code

During the 2011 session, the Oregon Legislature approved SB 301, which reconnects Oregon to the federal tax code retroactive to January 1, 2011. Passage of the bill was important because it signaled that the legislature is nearly done with the reconnect issue, which has been a thorn in the side of Oregon companies since 2009.

The 2009 Oregon Legislature disconnected from the federal tax code for a period of two years – essentially denying the ability of Oregon companies to claim federal bonus depreciation and increased Section 179 expensing limits on their state tax returns. ORLA opposed this action by the 2009 Legislature.

SB 301 did not help Oregon businesses reconnect to these meaningful federal provisions retroactively in 2010 as ORLA and other business groups had hoped for, but it did signal the end of this particular debate for the 2011 Legislature.

Why is this important? Because the 2009 Legislature disconnected from the federal code for only two years. Although the business community was not successful in gaining 2010 retroactive connection on key business tax issues, the fact remains that Oregon is now completely connected to the federal tax code effective January 1, 2011.

The benefits to Oregon companies and their employees from being fully connected to the federal tax code include:

- Federal law allows immediate expensing for up to \$500,000 in capital purchases. Oregon law only allows for \$134,000. New capital investment means new jobs.
- Federal law allows immediate 100% bonus depreciation of new assets placed in service in 2011, allowing more deductions upfront. Oregon does not.

**Accelerated depreciation and increased expensing allowances are critical tax provisions that are instrumental in business growth.**

Each of these federal tax provisions is in place to encourage new job-creating capital investment. Oregon's tax code will now follow suit from 2011 going forward.

The policy of keeping Oregon tax law connected to the federal IRS code serves both individual and business taxpayers well in terms of the costs and ease of compliance, as well as giving Oregon companies the maximum ability to invest in new capital equipment and the jobs they provide.

*Continued on page 3*

## CONFIDENTIAL BULLETIN



8565 SW Salish Ln. Ste 120  
Wilsonville, OR 97070  
503.682.4422 | 800.462.0619  
www.OregonRLA.org

Contact Kara Thallon at  
KThallon@OregonRLA.org  
with any questions  
or comments.

The Bulletin is a quarterly publication of the Oregon Restaurant & Lodging Association Government Affairs Department. Articles address issues relating to local, state and federal laws, as well as agency rules and regulations. The Government Affairs staff represents Oregon's hospitality industry at the state legislature, before regulatory bodies and at the local government level. ORLA's regulatory work focuses on the Oregon Health Division, Oregon Liquor Control Commission, Bureau of Labor and Industries, Travel Oregon, Oregon Employment Department, Workers' Compensation Division, and Department of Revenue.

**Steve McCoid**  
ORLA President & CEO  
SMcCoid@OregonRLA.org

**Bill Perry**  
VP of Government Affairs  
BPerry@OregonRLA.org

**Kara Thallon**  
Director of Public Affairs  
KThallon@OregonRLA.org

**Jeff Hampton**  
Executive VP  
JHampton@OregonRLA.org

**Glenda Hamstreet**  
Executive Coordinator  
Leadership & Government Affairs  
GHamstreet@OregonRLA.org

## NRA Concerned, Disappointed Over Federal Reserve's Decision On Swipe-Fee Reform.



The National Restaurant Association expressed concern and disappointment over the Federal Reserve's June 29 decision to cap the "swipe fees" that merchants pay for debit-card transactions at 21 cents per transaction. That's below the average 44 cents that merchants pay for debit charges today, but a significant increase over the 12-cent swipe-fee cap that the Federal Reserve proposed in December.

Visit [www.restaurant.org/cardfees](http://www.restaurant.org/cardfees) for more information.

The regulation, which will take effect Oct. 1, isn't in line with Congress's intent to make debit-card fees "reasonable and proportional" to the cost of processing debit charges, the Association said.

"The Federal Reserve appears to have caved to lobbying by the big banks and debit-card companies and ignored the spirit of last year's Durbin Amendment, which was aimed at fixing a broken U.S. debit-fee market and bringing fairness to merchants and consumers who have no control over rising swipe fees," said Scott DeFife, executive vice president of policy and government affairs for the National Restaurant Association.

By capping fees, the regulation will provide many restaurants with some financial relief from one of the fastest-rising and most uncontrollable costs involved in running a restaurant business.

*Continued on page 3*

---

# Oregon Reconnects To The Federal Tax Code

---

*Continued from page 1*

What's critical for Oregon businesses going forward is that it would take a "supermajority" vote in the Legislature to disconnect from the federal tax code for 2011 and beyond. And while there is some talk from various legislators of their desire to continue to disconnect Oregon businesses from key federal tax provisions, there does not appear to be anywhere near the necessary votes in the Legislature to do so.

ORLA will not entertain any discussion of disconnecting from federal tax laws going forward. Accelerated depreciation and increased expensing allowances are critical tax provisions that are instrumental in business growth. ☐



---

# NRA Concerned, Disappointed Over Federal Reserve's Decision On Swipe-Fee Reform.

---

*Continued from page 2*

However, the relief is not nearly as significant as the National Restaurant Association and its allies in the merchant community had hoped, and for some segments of the industry, there may be little if any immediate savings.

"We are disappointed that the final fee cap rose as much as it did from the Fed's proposed rule," DeFife said. "While the Fed's rule acknowledges that the card companies' practices have resulted in a broken market, and while the new cap will ensure that card companies cannot continue to arbitrarily increase debit interchange rates, this rule will not provide businesses and consumers with the savings they deserve under the law."

After years of complaints from the National Restaurant Association and other merchant groups about uncontrollable and rising interchange fees for their members, Congress passed the Durbin Amendment in 2010 to give the Federal Reserve the power to regulate interchange fees for debit cards.

The Durbin Amendment was included in the Dodd-Frank financial services reform bill Congress passed last year. The December action from the Federal Reserve resulted in months of intense lobbying by banking interests to overturn the Fed's proposal.

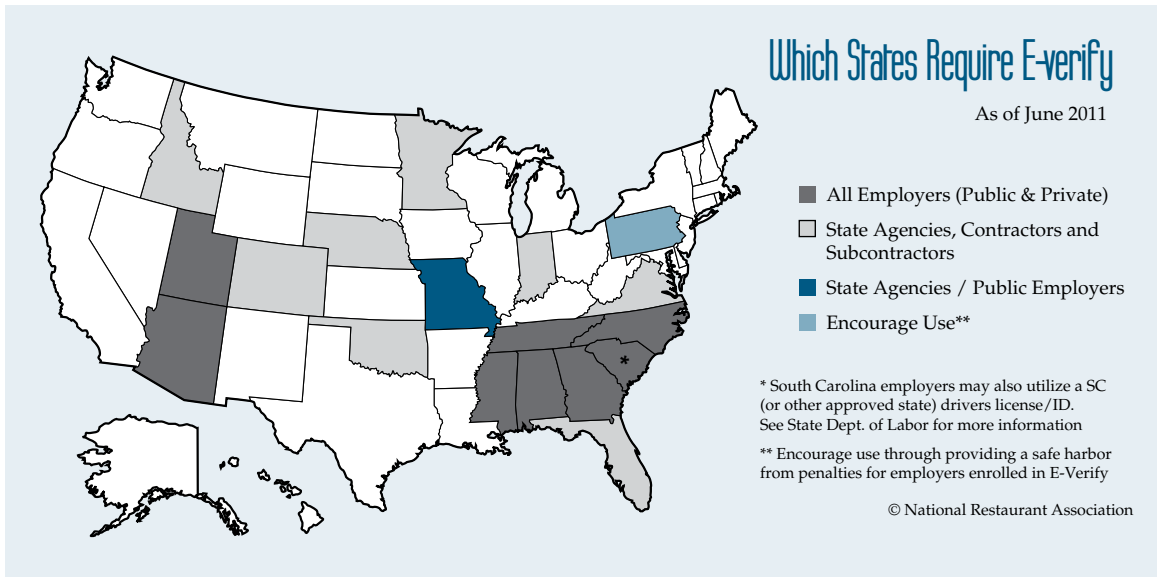
The Durbin Amendment -- named for its top champion in Congress, Sen. Dick Durbin (D-Ill.) -- charged the Federal Reserve with ensuring that debit-card fees are "reasonable and proportional" to the cost of processing transactions.

"We are grateful to Senator Durbin for his leadership throughout this two-year process to change the status quo of a broken debit-fee market," DeFife added. "We obviously must continue to work to educate policymakers on the

stranglehold that the card companies have on the American consumer."

The Durbin Amendment also allowed businesses to set a \$10 minimum for credit-card payments, and offer discounts to customers who pay in cash. These benefits have been in effect since last summer. ☐

# The National Restaurant Association Supports Comprehensive Immigration Reform



Through Coalition For A Working Oregon, ORLA has been very successful at keeping patchwork immigration reform law out of the State of Oregon, and promoting that such reform is a federal issue. The National Restaurant Association on the other hand, is in a tricky spot considering there are E-Verify mandates popping up all over the country. Below is a summary of the NRA's position on immigration reform.

**The Issue:** America's employers need a national strategy that blends worksite enforcement and secures borders with a path to legalization for many currently undocumented employees. Businesses also need a visa system that meets U.S. worksite needs when employers can't fill jobs domestically.

## State of Play

- Comprehensive immigration reform faces an uphill battle in the 112th Congress.
- The longer Congress fails to act, the more employers will face a growing patchwork of state and local worksite enforcement efforts. Businesses trying to comply will face a moving target of bewildering and punitive laws across the country — laws that fail to resolve fundamental problems with the U.S. immigration system.

- Leading members of Congress want to get more employers to use E-Verify, whether by mandate or voluntarily. E-Verify allows businesses to go online to check that employees are eligible to work in the United States. The Department of Homeland Security operates the program.
- Eight states -- Alabama, Arizona, Georgia, Mississippi, North Carolina, Tennessee, South Carolina and Utah -- have enacted laws to require most private-sector employers to use the E-Verify system. Other states mandate E-Verify for state contractors or state agencies.

## What the NRA Supports

- The NRA supports sensible, comprehensive immigration reform. Employers are partners in economic growth and job creation, not adversaries in the immigration debate. Businesses and their employees have a vital role to play in immigration reform. Employers want to work with government to find the right solutions.
- If Congress cannot enact comprehensive reform, the NRA supports Congress's efforts to establish a mandatory E-Verify system -- but only if it is successful, efficient and cost-effective in helping restaurants find a legally-authorized workforce.

- Employers need to know with certainty what their obligations are under employment verification laws, no matter where they are located. Employers will face tough challenges complying with a growing list of state and local mandates.
- Lawmakers must address some of the restaurant industry's primary concerns with E-Verify. Among our concerns:
- Small businesses may not have access to computers all day, high-speed internet connections, or human resources staff. Employers must have access to a phone system to make E-Verify inquiries.
- The current I-9 process should be streamlined. Employers must still be able to keep paper copies of E-Verify confirmations. There should not be overly burdensome, mandatory document-retention requirements.
- The E-Verify system can't catch unauthorized employees who use stolen or borrowed ID to pass an E-Verify check. Employers need a clear, functional way to verify documents are accurate. This means retooling and limiting the total number of acceptable work documents. Work-authorization cards should be tamper- and counterfeit-resistant.
- Employers who act in good faith deserve fair enforcement. Employers should not face fines or penalties for minor paperwork errors. They should get some time to fix paperwork errors made in good faith. In cases where employees committed identity fraud to pass an E-Verify test, employers need a safe harbor from prosecution.
- Employers should not be required to re-verify already-hired workers if E-Verify is made mandatory.
- The government should be held accountable for how E-Verify is administered. Employers and employees must have an appropriate process to contest findings.
- Employers should not have to pick up the cost of an expanded E-Verify system through fees or other means. DHS will need enough funding to maintain and expand E-Verify. ☐

---

## Tip Pooling Update!

---

Last year ORLA won a court case (*Cumbie v. Woody Woo, Inc.*) which allowed for tip pooling in the State of Oregon and in the 9th Circuit. On April 5, 2011, the U.S. Department of Labor ("DOL") published a "Final Rule," 76 Federal Register 18832, that amends and implements new tip pooling regulations that conflict in certain areas with the law in some states included in the 9th Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington), as established last year by the U.S. Court of Appeals in *Cumbie v. Woody Woo, Inc.* The new regulations, effective May 5, 2011, apply nationwide, including for employers in the 9th Circuit. The National Restaurant Association (NRA) submitted a written request to DOL on April 22, 2011, and met with DOL on May 3, 2011 to inform DOL that certain regulations, including those that now conflict with the law in the 9th Circuit, should be withdrawn, delayed, or at least clarified. Clarity is needed from DOL if employers in states in the 9th Circuit need to comply with the new regulations to the extent they conflict with the law in the 9th Circuit, as stated in *Woody Woo*.



is in fact legal in Oregon. Senator Merkley, who sits on both the Labor and Budget Committees, has sent a letter to the DOL seeking clarification behalf of his Oregon restaurant constituents. The letter states that it was the understanding of Oregon constituents of the *Cumbie v. Woody Woo, Inc.* case allowed tip pooling in the state of

Oregon, and it appears that the DOL rules say otherwise. Is tip pooling in Oregon in fact legal?

While we await a response from the DOL, NRA is looking into other channels, including litigation, to delay implementation and future enforcement until the industry's concerns are addressed. We believe the Department of Labor's new rules -- put into effect with just one month's notice and without properly considering their impact on the nation's nearly 1 million restaurants -- are confusing and will make restaurants vulnerable to damaging litigation and penalties. We understand that there are many concerns and questions regarding the new regulations. ORLA will keep you posted about our efforts to clarify and delay enforcement of these rules. Feel free to contact Kara Thallon at [kthallon@oregonrla.org](mailto:kthallon@oregonrla.org) with any questions. ☐

ORLA feels it's of the utmost importance to have something in writing from DOL stating that tip pooling

---

## Waiving Meal Periods

---

Rest and meal periods are supposed to benefit the employee. Federal Law allows for shortened or flexible break times as long as the employee is compensated for any breaks that are not at least 30 minutes of uninterrupted work time. The employee is given an opportunity to consume a meal and is paid for the time they are at work. The employee can then choose to take their break when it is appropriate. This is an important issue concerning our industry, as the main objective of the server is to earn tips and not the hourly wage they are paid. Servers do not want to have to “clock out” in the middle of a shift and miss peak revenue-generating time and a half hour of wages, just so an employer can meet a state requirement.

Servers in the restaurant industry wanted to have the choice of when and how they consume their meals during work hours. In 2007, ORS 653.261 was enacted, which stated that the Commissioner of the Bureau of Labor and Industries would permit employees who served food or beverages and worked for tips to waive meal periods. In addition, the law also prohibited employers from coercing employees into waiving meal

periods. Any employer found violating this law would receive a penalty of up to \$2,000. This law protects the employees and allows them the flexibility to waive a meal period should they choose. However, there was a sunset provision placed on the law, which was due to expire in 2012.



The 2011 Legislative Session saw the passage of House Bill 2240, which removes the sunset provision of ORS 653.261, and extends the law indefinitely for the benefit of the employee and employer.

To view and print the Oregon State Bureau of Labor and Industries’ meal waiver request and agreement form, please visit: <http://www.oregonrla.org/govt/operations/2011/meal-periods.php>. □

---

## Teen Hiring: A Few Legal Reminders

---



If you’re among the thousands of restaurateurs who added more teen employees this summer, here are a few reminders on the laws governing teen employment.

Federal teen labor law limits hours and responsibilities for employees age 14 and 15. It also restricts workers under age 18 from performing certain duties.

Every state has teen labor restrictions too. Whenever a state standard differs from the federal standard, the higher standard must be observed. State laws are often detailed and subject to constant change. The National Restaurant Association encourages operators to consult with their state labor department before acting on an important matter relating to teen labor.

### Restrictions on 14- and 15-year-olds

Although the minimum age for employment under federal law is generally 16 years, 14- and 15-year-olds are permitted to work under certain conditions. Generally, the Department of Labor allows teens who are 14 and 15 years old to work in most occupations as long as their employment does not interfere with their schooling or their health and well-being.

Under the federal Fair Labor Standards Act, 14- and 15-year-olds may not be employed:

- during school hours, except when participating in Work Experience and Career Exploration Programs

---

# Teen Hiring: A Few Legal Reminders

---

- before 7 a.m. or after 7 p.m. (from June 1 through Labor Day, 14- and 15-year-olds may work until 9 p.m.)
- more than three hours a day on school days
- more than 18 hours a week during school weeks
- more than eight hours a day on nonschool days
- more than 40 hours a week during nonschool weeks

Many states set stricter limits than federal law. In these cases the higher standard applies.

DOL regulations also outline what duties 14- and 15-year-olds are able to perform in the kitchen. The following duties are permissible for workers age 14 and 15 under federal law:

- may use “milk shake blenders,” which means equipment used to make “to-order” milkshakes for an individual customer. Other types of blenders and mixers are generally prohibited for this age group
- may cook with a gas or electric grill that does not have an open flame
- may use a deep fryer that is equipped with a device that automatically raises and lowers the basket
- may perform various food-and-beverage prep work. Examples of machines and devices employees age 14 and 15 may work with include microwave ovens that do not have the capacity to warm above 140 degrees Fahrenheit; dishwashers; devices used to maintain food temperatures (warmers, heat lamps, etc.); pop-up toasters; coffee machines, including espresso machines; popcorn poppers
- may clean, maintain and repair cooking devices such as grills, deep-fat fryers, and steam tables if equipment surfaces are below 100 degrees Fahrenheit.
- may change, clean, and dispose of oil and grease or oil and grease filters if the temperature of the liquid is less than 100 degrees Fahrenheit

Employees age 14 and 15:

- may not cook on a grill that has an open flame
- may not perform any baking, including any part of the baking process: weighing, mixing, putting products in pans or trays; operating pans of any type; and removing items from ovens or placing on cooling trays
- may not use a deep-fryer basket that must manually be raised or lowered
- may not use a rotisserie or pressurized equipment including fryolaters, or cooking devices that operate

at extremely high temperatures, such as “Neico broilers”

- may not use an automated broiler for chicken, beef, hamburgers, bread or buns
- may not clean equipment such as grills, deep-fat fryers and steam tables when the surface of the equipment is hotter than 100 degrees Fahrenheit
- may not filter and dispose of cooking oil or grease that is hotter than 100 degrees Fahrenheit (this includes a ban on lifting, moving or carrying containers or hot grease or oil 100 degrees Fahrenheit or higher)
- may not operate, set up, adjust, clean, oil or repair

## Although the minimum age for employment under federal law is generally 16 years, 14- and 15-year-olds are permitted to work under certain conditions.

power-driven food slicers and grinders, food choppers and cutters, and bakery-type mixers

- may not work in freezers and meat coolers, except for work requiring them to “occasionally” enter freezers only momentarily to retrieve items

## Restrictions on employment of 16- and 17-year-olds

Federal law does not restrict nighttime or morning work or set maximum daily or weekly hours for 16- and 17-year-olds. However, workers age 16 and 17 may not be employed in occupations the Secretary of Labor has declared particularly hazardous. The DOL has issued a number of “hazardous orders” to define which occupations are hazardous.

Under the DOL’s hazardous orders, for example, workers age 16 and 17 cannot operate or help in operating or setting up, adjusting, repairing, oiling or cleaning any horizontal or vertical dough mixer (except they may operate power-driven pizza dough rollers and portable countertop food mixers), batter mixer, bread-divider, rounding or molding machine, dough brake, dough shooter, combination bread slicer and wrapping machine, or cake-cutting band saw.

For the Oregon Employment of Minors Brochure, visit: <http://www.oregon.gov/BOLI/WHD/CLU/docs/employmentminorsbrochure2011.pdf> □



8565 SW Salish Ln. Ste 120  
Wilsonville, OR 97070

---

## SB 878: No Longer Requires Training for “ID Checkers”

---

When laws for private security training were developed, as per the Department of Public Safety Standards and Training (DPSST), ORLA held the position that basic functions or responsibilities of a liquor licensee should be exempt from training and DPSST certification. In the final statute, persons performing crowd management or guest services, including ticket takers, ushers, or a person employed for the purpose of age verification, were not required to undergo DPSST training, provided these persons were unarmed and not hired with the primary responsibility of taking enforcement action.

During the course of writing rules, DPSST went further by noting that by telling someone they can not enter, you are “controlling access” and therefore are required to have DPSST training, even if not taking an enforcement action or detaining persons.

The Oregon Restaurant & Lodging Association disagreed with DPSST that anyone “controlling access” requires training. The OLCC should hold licensees accountable for abiding by all laws, specifically preventing sales to minors and preventing service of intoxicated individuals. We’ve always said if you are authorizing physical force that’s a different issue and we have no problem with that. Checking ID for age verification was never mentioned.

The act of moving someone out to the front of your establishment to check ID and deal with the issue of minors or visibly intoxicated persons before they enter your establishment should be encouraged. Removing someone who is drunk once they are already inside, is usually when problems tend to escalate. Trying to prevent

minors or visibly intoxicated persons from entering your establishment should be encouraged, not penalized.

This issue came up now, years later, because in the last two years, local governments and OLCC both started writing tickets specifically on this rule change. It was brought to our attention that establishments were

**Be aware that some agencies and cities may still be enforcing this piece of the law until we are able to fix the verbiage in February.**

pulling their staff away from the door in order to avoid these fines and these confrontations were happening inside the establishment, which again makes them more problematic to solve. This Legislative Session, the passage of SB 878 clarifies that those who

are checking IDs for the purpose of age verification and not taking enforcement action do not need to be DPSST certified. SB 878 allows bars to prevent the problem before they start by stopping these people at the door. However, if someone is employed as a bouncer or for the primary purpose of taking enforcement action, they will still need to go through DPPST training.

Since SB 878 was signed by the Governor, there have been some questions regarding a drafting error in the bill. Although the legislative intent behind the bill was clear, ORLA will need to fix some verbiage during the 2012 Session to remove any questions around the change in the law. DPSST, OLCC and City of Portland are aware of the intent of the language and hopefully will not be writing tickets to “ID Checkers” who are not DPSST certified. However, there has been no such promise made. Be aware that some agencies and cities may still be enforcing this piece of the law until we are able to fix the verbiage in February. ☐

---