

Chapter 571

1999 EDITION

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NURSERIES; GROWERS; DEALERS

571.005 Definitions for ORS 571.005 to 571.230. Unless the context requires otherwise, as used in ORS 571.005 to 571.230:

(1) "Agent" means any person only soliciting orders in this state for the purchase or sale of nursery stock for any principal who is not licensed under ORS 571.005 to 571.230 and 571.991.

(2) "Dealer":

(a) Means any person who deals in, sells, handles, consigns or accepts on consignment, imports, stores, displays or advertises nursery stock which the person has not grown.

(b) Does not mean a person whose business is located out of state and who imports and sells such nursery stock not grown in Oregon into this state and who only solicits such nursery stock sales through salesmen or representatives or by mail or advertisement. Such person to be exempt as a dealer must not own, lease, control or maintain buildings, warehouses or any location or place in Oregon in which or through which such nursery stock is stored, sold, offered for sale or held for sale or delivered therefrom. The nursery stock must be shipped direct from the out-of-state location or place of business to the grower, wholesaler, retailer or ultimate consumer or user in Oregon.

(3) "Department" means the State Department of Agriculture.

(4) "Grower" means any person who grows nursery stock.

(5) "Nursery stock" includes all botanically classified plants or any part thereof, such as floral stock, herbaceous plants, bulbs, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees and shrubs, berry plants, and all trees, shrubs and vines and plants collected in the wild that are grown or kept for propagation or sale. "Nursery stock" does not include:

(a) Field and forage crops.

(b) The seeds of grasses, cereal grains, vegetable crops and flowers.

(c) The bulbs and tubers of vegetable crops.

(d) Any vegetable or fruit used for food or feed.

(e) Cut flowers, unless stems or other portions thereof are intended for propagation.

(6) "Person" includes but is not limited to each branch store or place of business in which or at which the business of the dealer or grower is conducted and each member of a cooperative association.

(7) "Sell" or "sale" means to offer, expose or hold for sale, have for the purpose of sale, or to solicit orders for sale, or to deliver, distribute, exchange, furnish or supply. [1963 c.461 s.1; 1977 c.638 s.1]

571.010 [Repealed by 1963 c.461 s.34]

571.015 Policy; department to maintain nursery service; duties. (1) The Legislative Assembly finds and declares that the propagation and raising of nursery stock is an agricultural pursuit that should be regulated and assisted by the State Department of Agriculture. A nursery service shall be maintained within the department for the purpose of carrying out and enforcing the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

(2) The department is authorized to:

(a) Inspect the nursery stock of growers, dealers and other persons and places of business provided for under ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

(b) Issue certificates and permits and check the license and licensing of persons affected by ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

(c) Investigate violations of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

(d) Disseminate information among growers relative to treatment of nursery stock for both prevention and elimination of attacks by plant pests and diseases.

(e) Carry out any other duties or responsibilities which are of service to the nursery industry or which may be necessary for the protection thereof. [1953 c.461 s.4; 1983 c.730 s.4]

571.020 [Repealed by 1963 c.461 s.34]

571.025 State Nursery Research and Regulatory Committee. (1) In order that there may be the closest contact between the State Department of Agriculture and the problems of the nursery industry, there hereby is created a State Nursery Research and Regulatory Committee which shall consist of seven members appointed by the Director of Agriculture. The director, as far as practicable, shall make appointments so that all segments of the nursery industry are represented on the committee.

(2) The term of each member shall be for three years, beginning on July 1 of the year of appointment. Vacancies in office shall be filled by appointment for the unexpired term. At the first meeting after July 1 in each year, the committee shall elect a chairperson.

(3) The functions of the committee shall be to advise and counsel with the department in the administration of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991 and review the nursery inspection program.

(4) The committee shall meet at the call of the chairperson or the director of the State Department of Agriculture. A majority of the members present at any meeting shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the committee. [1963 c.461 s.3; 1967 c.208 s.3; 1979 c.309 s.1; 1993 c.683 s.1]

571.030 [Repealed by 1963 c.461 s.34]

571.035 Department list of nursery stock. The State Department of Agriculture shall as authorized by ORS 183.310 to 183.550 establish and maintain a list of cut greenery which shall be nursery stock and subject to the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991. All other cut greenery shall be exempt from the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991. [1963 c.461 s.2]

571.040 [Repealed by 1963 c.461 s.34]

571.045 Exemption from licensing requirements. ORS 571.055 (1) and 571.057 do not apply to:

(1) Any person whose business consists only of retail sales to the ultimate consumer and the total of such sales of nursery stock does not exceed \$250 during a fiscal year. Except as provided in subsection (2) of this section, the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991 apply at any time the sales of nursery stock exceed \$250 during a fiscal year.

(2) A person licensed as a landscaping business under ORS 671.560 and 671.565 who does not grow plants, does not store plants except as provided by the State Department of Agriculture by rule, and acquires all plants from a nursery licensed under this chapter. [1963 c.461 s.15; 1971 c.756 s.1; 1975 c.110 s.1; 1977 c.638 s.2; 1999 c.535 s.1]

571.050 [Repealed by 1963 c.461 s.34]

571.055 License required to grow or deal in nursery stock; false representations or statements regarding licenses. (1) No person, without first obtaining a license from the State Department of Agriculture, shall:

- (a) Operate as a grower, dealer or agent.
- (b) Advertise or display nursery stock for sale on any stand, market stall, store or other place of business.
- (c) Advertise nursery stock for sale by the use of signboards, placards, public communications media, newspapers, business letterhead stationery or other circulating medium.
- (d) Transport, move, store or warehouse nursery stock grown or held for sale. However, this paragraph does not apply to common carriers.

(2) No person shall:

- (a) Falsely represent that the person is a licensed grower, dealer or agent.
- (b) Willfully make a false statement when making an application for a license. [1963 c.461 ss.5,9]

571.057 License application; contents; fee. (1) Each person required to be licensed by ORS 571.055 shall make application for such license or for renewal thereof, on a form furnished by the State Department of Agriculture which shall contain:

- (a) The name and address of the applicant; the number of locations to be operated by the applicant and the addresses thereof; and the assumed business name of the applicant;
- (b) If other than an individual, a statement whether such person is a partnership, corporation or other organization;
- (c) The gross dollar volume of sales or purchases of nursery stock by the applicant within Oregon during the prior calendar year, or if the applicant maintains sales records on a fiscal basis, the prior fiscal year; and
- (d) The type of business to be operated and, if applicant is an agent, the principals the applicant represents.

(2) Each application for license shall be accompanied by a license fee as provided for by this section and any amounts required by ORS 571.075 (3). Such application shall not be a public record but shall be subject to audit and review by the department. An applicant for an original license or for a renewal license, without a full calendar year of prior nursery stock sales or purchase experience upon which to base the fees, shall base such fees on an estimated annual gross dollar volume of sales or purchases of nursery stock by the applicant. Notwithstanding the provisions of ORS 571.075, upon application by such person for a renewal of license for a subsequent year, the fees for the previous license year shall be adjusted to reflect the actual annual gross dollar volume of sales or purchases of nursery stock by such applicant. Any additional fees found to be due shall be paid to the department at the time of application for renewal of license, or the department shall refund any overpayment found to be due the applicant.

(3)(a) For license years beginning on and after July 1, 1995, the license fees for growers and dealers shall be established by the department after consulting with the State Nursery Research and Regulatory Committee and after public hearing in accordance with ORS 183.310 to 183.550. Such fees shall be established on the basis of annual gross dollar volume of sales or purchases of nursery stock within Oregon for the calendar year immediately preceding the license period.

(b) The license fees shall not be less than \$65 nor more than \$20,000. The millage rate shall be not less than one-tenth mill nor more than 5 mills. The fees shall be established in such amount as shall be sufficient to allow the department to administer and enforce the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

(c) For license years beginning July 1, 1994, and thereafter, in addition to and at the time of payment of the annual license fee, growers and dealers shall pay assessments for the expenses of carrying out the provisions of ORS 571.230 (2) and (3). Dealers shall pay .0002 times the gross dollar purchases in the previous license year. Growers shall pay .0002 times the gross dollar sales in the previous license year. In no event shall the assessment be less than \$10.

(4) For florists and landscape contractors, dealer and agent fees will be computed on the basis of gross purchases of plants. For greenhouse operators and growers, including persons collecting native plants, fees will be computed on the basis of gross sales of plants or sales value of plants produced in Oregon.

(5) Each grower or dealer shall be entitled to one sales location under the license of the grower or dealer. Each additional sales location, yard, branch store, stall or peddling vehicle maintained by such person shall require the payment of the full license fee for each of such additional sales outlets. A grower who is also a dealer shall be licensed only as a grower. [1971 c.756 s.6; 1977 c.638 s.3; 1985 c.659 s.1; 1993 c.683 s.3]

571.060 [Repealed by 1963 c.461 s.34]

571.063 Temporary nursery sale license; application; fee; conditions. (1) Upon payment of a fee of \$5, a

temporary nursery sale license may be issued by the State Department of Agriculture for the holding of a nursery stock sale conducted by, or for the benefit of, a duly registered nonprofit organization, where such sale does not exceed seven consecutive days.

(2) Application for a temporary nursery sale license shall be made on a form furnished by the department, and shall be accompanied by the license fee. A separate application and license fee is required for each sale.

(3) The department may prescribe the conditions of such temporary nursery sales license, which conditions shall be stated in the license. Any such license may be revoked or suspended by the department for violation of any of the conditions stated therein. ORS 571.005 to 571.230 and 571.991 shall not be applicable to such temporary nursery sales except as provided in this section. [1971 c.756 s.8]

571.065 [1963 c.463 s.6; repealed by 1971 c.756 s.9]

571.070 [Repealed by 1963 c.461 s.34]

571.075 Renewal of license; forfeiture. (1) The fees for the renewal of the annual licenses and the fees for inspections required by ORS 571.005 to 571.230 and 571.991 shall be paid with the application for license renewal and before July 1 of each year.

(2) Failure to pay the fees when due forfeits the right to operate as a grower, dealer or agent.

(3) Any person who has been previously licensed to grow or sell nursery stock and whose right to grow or sell has been forfeited shall not be issued a renewal license except upon written application to the State Department of Agriculture accompanied by a sum of money equal to the regular license fee, as provided in ORS 571.057. [1963 c.461 s.12; 1971 c.756 s.2; 1977 c.638 s.4; 1985 c.659 s.3]

571.080 [Repealed by 1963 c.461 s.34]

571.085 [1963 c.461 s.13; repealed by 1971 c.756 s.9]

571.090 [Repealed by 1963 c.461 s.34]

571.095 Form of license; display required. All licenses issued under ORS 571.005 to 571.230 and 571.991 shall:

(1) Include the date of issue.

(2) Expire on June 30, next following the date of issue, unless sooner revoked by the State Department of Agriculture.

(3) Be in the form of a certificate.

(4) Be numbered serially under the direction of the department.

(5) Be posted in a conspicuous place on the premises of the licensee and a copy at each location where the licensee is doing business, where they can be easily seen by the general public. A duplicate copy of the license shall be issued by the department for each sales location of the licensee. [1963 c.461 s.10; 1971 c.756 s.3]

571.100 [Repealed by 1963 c.461 s.34]

571.105 Agent's license. (1) No agent's license shall be issued or valid unless the agent's principal has given the State Department of Agriculture written authorization to issue the license.

(2) An agent's license shall be automatically suspended during any period when the agent is not acting as an agent or the principal has withdrawn or canceled the authorization.

(3) If the license has not expired, an agent may revive the license by giving notice to the department that the agent is again acting as an agent. If the agent represents a principal other than the one who gave written authorization to issue the license, subsection (1) of this section applies. [1963 c.461 s.8]

571.110 [Repealed by 1963 c.461 s.34]

571.115 License not transferable; moving place of business. (1) 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.

(2) The license issued to a grower or dealer applies to the particular premises named in the license. However, if prior approval is obtained from the State Department of Agriculture, the place of business may be moved to other premises or location without the necessity of relicensing. [1963 c.461 s.7]

571.120 [Repealed by 1963 c.461 s.34]

571.125 Suspension, revocation or refusal of license. The State Department of Agriculture may, as provided in ORS 183.310 to 183.550, suspend, revoke or refuse to issue or renew the license of any person when it is satisfied that:

- (1) The applicant or licensee has been guilty of fraud, deception or misrepresentation in the handling or sale of nursery stock.
- (2) The licensee was guilty of fraud, deception or misrepresentation in the procurement of a license.
- (3) The licensee has violated any provision of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991. [1963 c.461 s.11]

571.130 [Repealed by 1963 c.461 s.34]

571.135 Issuance of shipping permit numbers. (1) The State Department of Agriculture may issue a shipping permit number to any licensee who requests or requires one. Such number shall be the same as the license number and so designated on the license.

(2) When authorized or required by the department, the shipping permit number shall accompany all shipments and deliveries of nursery stock. [1963 c.461 s.16]

571.140 [Repealed by 1963 c.461 s.34]

571.145 Inspection of licensed and unlicensed nurseries; additional inspections and special services; fees. (1) The State Department of Agriculture shall inspect each licensed nursery at least once each fiscal year as often thereafter as the department considers necessary to determine and control pest, disease and noxious weed conditions.

(2) The department may make additional inspections as necessary for the issuance of phytosanitary and other certificates. Such additional inspections are in addition to normal inspections as provided by subsection (1) of this section. The department may charge for such inspections requested by nurseries in order to issue state or federal phytosanitary certificates and any other certificate that requires inspection prior to issuance of such certificates. Such charge shall not be less than \$10 per requested certificate or greater than \$50 per such certificate. However, for license years after June 30, 1995, the department may establish the certificate fee without regard to the limitations provided in this subsection after consulting with the State Nursery Research and Regulatory Committee and after holding public hearings in accordance with ORS 183.310 to 183.550.

(3) The department may establish a schedule of fees for nursery stock inspections and special services which may be performed by the department for persons who are not required to obtain a license pursuant to ORS 571.005 to 571.230 and 571.991. The fees shall be established in such amounts as are reasonably necessary to recover all costs incurred by the department in the performance of such inspections and special services. Payment for such inspections and special services shall be made to the department at the time the inspections or special services are performed. [1963 c.461 s.17; 1977 c.638 s.5; 1985 c.659 s.4; 1993 c.683 s.6]

571.147 Department audit of books and records of licensees; suspension of license for failure to submit to audit. (1) The State Department of Agriculture is authorized to audit the books and records of applicants or licensees, as it deems necessary, in order to insure compliance with ORS 571.057. Such audit may be made at the applicant's or licensee's place of business during normal business hours, upon three days' notice from the department.

(2) Notwithstanding the provisions of ORS 183.310 to 183.550, failure by a licensee to allow such audit shall automatically suspend the license of the licensee until the audit is performed and any additional fee and penalty found to be due is paid to the department. [1971 c.756 s.7]

571.150 [Repealed by 1963 c.461 s.34]

571.160 General prohibition. No person, individually or acting for another person, such as an official or

employee acting for a corporation, shall violate ORS 564.040, 564.991, 571.005 to 571.230 and 571.991. [1963 c.461 s.27]

571.170 Substitution or transportation of uninspected nursery stock prohibited. No person shall:

- (1) Substitute other nursery stock for nursery stock covered by an inspection certificate.
- (2) Transport or accept for transportation nursery stock that does not carry the official inspection tag authorized by the State Department of Agriculture. [1963 c.461 s.18]

571.180 Misrepresentation of nursery stock by grower, dealer or agent prohibited; tag or label required on fruit trees; nursery stock as horticultural product. (1) No grower, dealer or agent shall:

- (a) Sell nursery stock representing it to be a name, age or variety different from what the nursery stock actually is.
 - (b) Represent that any nursery stock is a new variety, when in fact it is a standard variety and has been given a new name.
 - (c) Sell or represent cormels as corms or bulblets as bulbs.
- (2) In addition to the provisions of ORS 632.450 to 632.490 and 632.900 to 632.985, all other laws relating to labeling and the provisions of subsection (1) of this section, the grower, dealer or agent shall attach to every bundle of fruit-bearing trees sold or shipped within this state a tag or label specifying the name of the variety of trees contained therein. If the bundle shall contain trees of different varieties, such label or tag shall be attached to each tree or group of trees of the same variety. The purchaser of any fruit-bearing tree or trees not true to name as specified on such tag or label, shall have a remedy at law in a civil action to recover the damages sustained. Such action may be brought at any time prior to the third bearing year.
- (3) "Horticultural products" as defined in ORS 632.450 and 632.900 includes nursery stock. [1963 c.461 s.19]

571.190 Knowingly selling, advertising or displaying damaged, misrepresented or mislabeled nursery stock prohibited. No person shall knowingly offer to sell, advertise or display nursery stock:

- (1) That is dead, in a dying condition, seriously broken, desiccated, frozen or damaged by freezing, or materially damaged in any way.
- (2) By any methods which have the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, name, age, variety, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect.
- (3) That fails to meet the grade with which it is labeled.
- (4) By making other false or fraudulent representations in connection with the sale of nursery stock. [1963 c.461 s.20]

571.200 Knowingly offering to sell, moving or storing infected or infested nursery stock prohibited. (1)(a) No person shall knowingly offer to sell nursery stock that is infected or infested.

(b) Unless the nursery stock is held for separation or treatment under the supervision of an officer, employee or inspector of the State Department of Agriculture, no person shall advertise, display, transport, move, store or warehouse nursery stock that is infected or infested.

(c) Any infected or infested nursery stock may be seized in accordance with the procedures provided for in ORS 561.605 to 561.630.

(2) As used in subsection (1) of this section:

- (a) "Infected" means any appearance of a disease symptom or causal agent that may, in the opinion of the department, be a menace to other nursery stock or any products or properties.
- (b) "Infested" means when the mature or immature form of any plant pest, including noxious weeds as defined by the department, is found in such numbers as, in the opinion of the department, to be a menace to other nursery stock or any product or properties. [1963 c.461 ss.21,22; 1985 c.565 s.84a]

571.210 Hold order on defective nursery stock; condemnation. (1) When the State Department of Agriculture has cause to presume that any nursery stock will not perform in a normal manner, the officials, employees or inspectors of the department may issue a hold order for a period not to exceed 10 days. No person shall sell or dispose of in any manner such nursery stock within the 10-day period without written permission from the department.

(2) If a person displays or sells nursery stock that is dead, in a dying condition, seriously broken, frozen or

damaged by freezing or materially damaged in any way, any officer, employee or inspector of the department may condemn such nursery stock and order it destroyed. [1963 c.461 s.23]

571.220 Imported nursery stock to bear certificate of origin; contents. Nursery stock imported into Oregon must be accompanied by a certificate from the place of origin, signed by an authorized agent or representative of the agency supervising and responsible for carrying out the nursery stock laws of such originating state or country. The certificates shall contain additional information as may be required by the State Department of Agriculture to carry out and enforce the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991. [1963 c.461 s.24]

571.230 Disposition and use of moneys received. (1) Except for fees paid under ORS 571.057, 571.063 and 571.145 (3), the State Department of Agriculture shall deposit all fees paid to it under ORS 571.005 to 571.230 and 571.991 in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such fees are continuously appropriated to the department for the purpose of administering and enforcing ORS 564.040, 564.991, 571.005 to 571.230 and 571.991. The fees paid to the department under ORS 571.057, 571.063 and 571.145 (3) shall be deposited by the State Treasurer in the Department of Agriculture Service Fund, and such funds are continuously appropriated to the department for the purposes of administering and enforcing ORS 571.005 to 571.230 and 571.991.

(2) The amount of revenue generated for nursery research pursuant to ORS 571.057 (3)(c) shall be used by the department only for the purposes set forth in subsection (3) of this section. With the advice of the State Nursery Research and Regulatory Committee, the director shall identify research needs of the Oregon nursery industry and shall obtain services of researchers for the purposes set forth in subsection (3) of this section.

(3) The amounts provided for in ORS 571.057 (3)(c) shall be used in carrying on experimental and research projects and investigations directed toward the prevention and elimination of plant diseases, insect pests and the development and improvement of cultural methods that are beneficial to the nursery industry. [1963 c.461 s.25; 1971 c.756 s.4; 1979 c.499 s.5; 1985 c.659 s.2; 1993 c.683 s.7]

571.240 [1963 c.461 s.14; 1967 c.637 s.12; repealed by 1971 c.756 s.9]

571.250 Interagency agreement to ensure compliance. The State Landscape Contractors Board and the State Department of Agriculture shall enter into an interagency agreement to address how the board and the department shall ensure that licensed landscaping businesses comply with the provisions of this chapter. [1999 c.535 s.3]

CHRISTMAS TREE GROWERS

571.505 Definitions for ORS 571.510 to 571.580. As used in ORS 571.510 to 571.580, unless the context requires otherwise:

(1) "Acre of Christmas trees" means an acre of land upon which Christmas trees are growing at the time of application for the license required by ORS 571.525.

(2) "Christmas tree" means a cut evergreen tree:

(a) Of a marketable species;

(b) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agricultural Marketing Service of the United States Department of Agriculture; and

(c) Evidencing periodic maintenance practices of shearing or culturing, or both, for all Christmas tree species; weed and bush control and one or more of the following practices: Basal pruning, fertilization, insect and disease control, stump culture, soil cultivation and irrigation.

(3) "Dealer" means a person who purchases Christmas trees for resale.

(4) "Department" means the State Department of Agriculture.

(5) "Grower" means any person who grows Christmas trees for sale.

(6) "Natural timber stand" means any site where Christmas trees are growing with a spacing greater than 9.5 feet by 9 feet.

(7) "Sell" or "sale" means to offer or hold for the purpose of sale, or to solicit orders for sale or to deliver, distribute, exchange, furnish or supply. [1985 c.197 s.1; 1989 c.561 s.1]

571.510 Policy; department to maintain Christmas tree service; duties. (1) The Legislative Assembly finds and declares that the propagation and raising of Christmas trees is a silvicultural and agricultural pursuit that should be

regulated and assisted by the State Department of Agriculture. A Christmas tree service shall be maintained within the department for the purpose of carrying out and enforcing the provisions of ORS 571.505 to 571.580.

(2) The department is authorized to:

(a) Inspect the Christmas tree stock of growers.

(b) Issue certificates and permits and check the license and licensing of persons required to be licensed by ORS 571.505 to 571.580.

(c) Investigate violations of ORS 571.505 to 571.580.

(d) Disseminate information among growers relative to treatment of Christmas tree stock for both prevention and elimination of attacks by plant pests and diseases.

(e) Carry out any other duties or responsibilities which are of service to the Christmas tree industry or which may be necessary for the protection thereof. [1985 c.197 s.2; 1989 c.561 s.2]

571.515 State Christmas Tree Advisory Committee. (1) In order that there may be the closest contact between the State Department of Agriculture and the problems of the Christmas tree industry, there hereby is created a State Christmas Tree Advisory Committee which shall consist of six members appointed by the Director of Agriculture. The director, as far as practicable, shall make appointments so that all areas of the state are represented on the committee.

(2) The members first appointed shall determine by lot the length of their terms: Two to serve for one year, two to serve for two years and two to serve for three years, from the date of appointment. Thereafter the term of each member shall be for three years, from the date of appointment. A member shall continue to serve until a successor is appointed and qualifies. Vacancies in office shall be filled by appointment for the unexpired term. An individual is not eligible to serve more than two consecutive terms as a member.

(3) The members of the committee shall be eligible for compensation and expenses as provided in ORS 292.495, to be paid from funds provided by ORS 571.580.

(4) The functions of the committee shall be to advise and counsel with the department in the administration of ORS 571.505 to 571.580.

(5) The committee shall meet at the call of the chairperson or the director of the State Department of Agriculture. A majority of the members present at any meeting shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the committee.

(6) At the first meeting in each year the committee shall select a chairperson. The Dean of the College of Agricultural Sciences, Oregon State University, and the director of the State Department of Agriculture, or their representatives, shall be ex officio members without the right to vote. [1985 c.197 s.3; 1995 c.79 s.310]

571.520 Exemptions from licensing requirements. ORS 571.525 and 571.530 do not apply to:

(1) Any grower owning one acre or less of Christmas trees and whose business consists only of retail sales to the ultimate consumer.

(2) Any dealer. [1985 c.197 s.4; 1989 c.561 s.3]

571.525 License required to operate as grower. No person shall operate as a grower without first obtaining a license therefor from the State Department of Agriculture. [1985 c.197 s.5]

571.530 License application; contents; fee. (1) Each person required to be licensed by ORS 571.525 shall make application for such license or for renewal thereof on a form furnished by the State Department of Agriculture which shall contain:

(a) The name and address of the applicant, the number of locations to be operated by the applicant and the addresses thereof, and the assumed business name of the applicant;

(b) If other than an individual, a statement whether such person is a partnership, corporation or other organization;

(c) The total number of acres of Christmas trees grown by the applicant; and

(d) The type of business to be operated and, if the applicant is an agent, the principals the applicant represents.

(2) Each application for license shall be accompanied by a license fee as provided for by this section. Such application shall not be a public record but shall be subject to audit and review by the department.

(3)(a) The license fees for growers shall be established on the basis of the total number of acres of Christmas trees being grown in this state by the applicant. For the purpose of calculating the license fee, four acres of Christmas trees growing in a natural timber stand shall be considered the equivalent of one acre of planted Christmas trees.

(b) The annual license fee schedule shall be established by the department after consultation with the State

Christmas Tree Advisory Committee and after a public hearing in accordance with ORS 183.310 to 183.550. The annual license fee shall not exceed \$75 as a basic charge and \$3 per acre as an acreage assessment. The total license fee established pursuant to this paragraph shall not exceed \$5,000. [1985 c.197 s.6; 1989 c.561 s.4; 1999 c.59 s.180]

571.535 Renewal of license. (1) The fees for the renewal of the annual licenses required by ORS 571.505 to 571.580 shall be paid with the application for license renewal and before July 1 of each year.

(2) Failure to pay the fees when due forfeits the right to operate as a grower.

(3) Any person who has been previously licensed to grow Christmas tree stock and whose right to grow has been forfeited shall not be issued a renewal license except upon written application to the State Department of Agriculture accompanied by a sum of money equal to the regular license fee. [1985 c.197 s.7]

571.540 Form of license; display required. All licenses issued under ORS 571.505 to 571.580 shall:

(1) Include the date of issue.

(2) Expire on June 30, next following the date of issue, unless sooner revoked by the State Department of Agriculture.

(3) Be in the form of a certificate.

(4) Be numbered serially under the direction of the department.

(5) Be posted in a conspicuous place on the premises of the licensee and a copy at each location where the licensee is doing business, where they can be easily seen by the general public. [1985 c.197 s.8]

571.545 License not transferable; notice of change of business organization; additional assessment for trees not subject to fee. (1) A license is personal to the applicant and may not be transferred. The licensee shall notify the State Department of Agriculture in writing if the business entity of the licensee is changed or if the members of a partnership change, whether or not the business entity name is changed.

(2) The license issued to a grower applies to the particular premises named in the license. However, if prior approval is obtained from the department, the place of business may be moved to other premises or location without the necessity of relicensing. An additional acreage assessment in accordance with ORS 571.530 shall be paid for any acres of Christmas trees not included in the license fee paid at the previous location and will be added when the business changes location. [1985 c.197 s.9; 1989 c.561 s.5]

571.550 Suspension, revocation or refusal of license. As provided in ORS 183.310 to 183.550, the State Department of Agriculture may suspend, revoke or refuse to issue or renew the license of any person when it is satisfied that:

(1) The applicant or licensee has been guilty of fraud, deception or misrepresentation in the handling or sale of Christmas tree stock.

(2) The licensee was guilty of fraud, deception or misrepresentation in the procurement of a license.

(3) The licensee has violated any provision of ORS 571.505 to 571.580. [1985 c.197 s.10]

571.555 Issuance of shipping permit numbers. (1) The State Department of Agriculture shall issue a shipping permit number to any qualified licensee who requests or requires one. Such number shall be the same as the license number and so designated on the license.

(2) The shipping permit number shall accompany all shipments and deliveries of Christmas tree stock. [1985 c.197 s.11; 1989 c.561 s.6]

571.560 Inspections for pest, disease and weed control; additional inspections for special certificates. (1) The State Department of Agriculture shall inspect licensed grower's operations as often as the department considers necessary to determine and control pest, disease and noxious weed conditions.

(2) In addition to the inspections provided in subsection (1) of this section, the department shall make such inspections as are necessary for the issuance of phytosanitary and other certificates. [1985 c.197 s.12; 1989 c.561 s.7]

Note: Section 1, chapter 812, Oregon Laws 1999, provides:

Sec. 1. For the purpose of carrying out the provisions of ORS 291.055 (1)(e), the following fee increases, approved by the Oregon Department of Administrative Services, for the State Department of Agriculture that has authority to

modify fees by administrative rule or that have not met the maximum amount prescribed by statute, are approved as follows:

- | | | |
|-----|---|----------------------|
| (1) | Commercial Phytosanitary certificate | \$30 per certificate |
| (2) | Noncommercial Phytosanitary certificate | \$18 per certificate |
| (3) | Unlicensed nursery inspections | \$45 per hour |

[1999 c.812 s.1]

571.565 Department to determine accuracy of acreage reporting for fee calculations. The State Department of Agriculture shall use all appropriate methods to determine the accuracy of acreage reporting to determine the license fee prescribed by ORS 571.530. [1985 c.197 s.13; 1989 c.561 s.8]

571.570 Substitution or transportation of uninspected Christmas tree stock. No person shall:

- (1) Substitute other Christmas tree stock for Christmas tree stock covered by an inspection certificate.
- (2) Transport or accept for transportation Christmas tree stock that does not carry the official inspection tag authorized by the State Department of Agriculture. [1985 c.197 s.14]

571.575 Knowingly offering to sell infected or infested Christmas tree stock. (1)(a) No person shall knowingly offer to sell Christmas tree stock that is infected or infested.

(b) Unless the Christmas tree stock is held for separation or treatment under the supervision of an officer, employee or inspector of the State Department of Agriculture, no person shall advertise, display, transport, move, store or warehouse Christmas tree stock that is infected or infested.

(c) Any infected or infested Christmas tree stock may be seized in accordance with the procedures provided for in ORS 561.605 to 561.630.

(2) As used in subsection (1) of this section:

(a) "Infected" means any appearance of a disease symptom or causal agent that may, in the opinion of the department, be a menace to other Christmas tree stock or any products or properties.

(b) "Infested" means when the mature or immature form of any plant pest, including noxious weeds as defined by the department, is found in such numbers as, in the opinion of the department, to be a menace to other Christmas tree stock or any product or properties. [1985 c.197 s.15]

571.580 Disposition and use of moneys received. The State Department of Agriculture shall deposit all fees paid to it under ORS 571.505 to 571.580 in the Department of Agriculture Service Fund, and such moneys are continuously appropriated to the department for the purposes of administering and enforcing ORS 571.505 to 571.580. [1985 c.197 s.16]

PENALTIES

571.990 [Repealed by 1963 c.461 s.34]

571.991 Penalties for ORS 571.005 to 571.230. Subject to ORS 153.022, violation of ORS 571.005 to 571.230 or rules adopted thereunder is punishable, upon conviction, by a fine of not more than \$5,000. [1963 c.461 s.32; 1985 c.659 s.5; 1999 c.1051 s.318]

571.995 Penalties for ORS 571.525, 571.570 and 571.575. Violation of ORS 571.525, 571.570 or 571.575, or of any rules adopted pursuant thereto, is a misdemeanor. [1985 c.197 s.17]

Note: Sections 6 and 7, chapter 390, Oregon Laws 1999, provide:

Sec. 6. Temporary additional penalties. (1) In addition to any applicable criminal penalty under ORS 571.991 or 571.995 or any other penalty, a person who violates ORS 571.055 or 571.525 is subject to a civil penalty imposed by the State Department of Agriculture. The civil penalty shall not exceed \$10,000.

(2) Every violation of ORS 571.055 or 571.525 is a separate offense subject to a separate civil penalty.

(3) The department shall consult with, and seek the advice of, the State Christmas Tree Advisory Committee and the State Nursery Research and Regulatory Committee in order to:

(a) Develop one or more schedules setting the amounts of civil penalties that may be imposed for particular types of violations;

(b) Develop guidelines and policies regarding the circumstances under which civil penalties should be imposed; and

(c) At least biannually review cases to ensure that guidelines and policies developed under paragraph (b) of this subsection are being followed.

(4) The imposition of a civil penalty under this section is subject to ORS 183.090.

(5) The State Treasurer shall deposit all moneys from civil penalties recovered under this section into the Department of Agriculture Account.

(6) Moneys from civil penalties recovered under this section for a violation of ORS 571.055 are continuously appropriated to the department for the administration of nursery laws and industry projects under ORS 571.005 to 571.230.

(7) Moneys from civil penalties recovered under this section for a violation of ORS 571.525 are continuously appropriated to the department for the administration of Christmas tree laws and industry projects under ORS 571.510 to 571.580. [1999 c.390 s.6]

Sec. 7. (1) The State Department of Agriculture may not levy a civil penalty under section 2, 4 or 6 of this 1999 Act for any violation occurring after December 31, 2001.

(2) Sections 2, 4 and 6 of this 1999 Act are repealed December 31, 2002. The repeal of sections 2, 4 and 6 of this 1999 Act does not relieve any person of the obligation to pay a civil penalty lawfully imposed by the department prior to December 31, 2002. [1999 c.390 s.7]
