Chapter 585

2005 EDITION

Produce Dealers

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585.010 Definitions for ORS 585.010 to 585.220. As used in ORS 585.010 to 585.220, unless the context requires otherwise:

(1) "Cash buyer" means any person who acts as a wholesale produce dealer and who, at the time of obtaining possession or control of any produce, pays the full agreed price in lawful money of the United States or by certified check, cashier's check or post-office money order.

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

(3) "Grower" means any person engaged in the business of growing or producing any produce and includes any cooperative organization composed exclusively of growers and handling exclusively the produce of its own members and operating under and by virtue of the laws of this state or of any other state or of the United States.

(4) "Produce" means fruits and vegetables, but it does not include fruits and vegetables purchased for the purpose of reselling them canned, dried, frozen or in other preserved or concentrated form or for manufacturing into a product or by-product in which the individuality of the individual specimens of such fruit and vegetables is lost, if such fruits and vegetables are actually so used. "Produce" does not include certified seed potatoes purchased for the purpose of reselling them for seed.

(5) "Retail produce peddler" means any person who sells or offers for sale or exposes for sale produce which the person has not grown or produced, from any vehicle at any dwelling house, restaurant, eating house, hotel or any other public or private place where food is prepared for consumption and not resold in its original form and condition, and any person who sells to or offers for sale to the general public any produce, which the person has not grown or produced, from a vehicle in any place within this state.

(6) "Wholesale produce dealer" means any person who deals in, handles or trades in produce and who does not operate exclusively as a grower, retailer or warehouseman; but this definition does not include any person who is a cash buyer. [Amended by 1959 c.64 §1; 1959 c.431 §1]

585.020 Licenses required for produce dealers, peddlers and cash buyers. No person shall engage or continue in business as a wholesale produce dealer, as a retail produce peddler or as a cash buyer, unless the person has first made written application for and obtained from the State Department of Agriculture a license so to do, and has paid the license fees required by ORS 585.050. [Amended by 1959 c.431 §2]

585.030 Application for license; designating agent for service of process. (1) Applications for licenses shall be filed with the State Department of Agriculture. Applications shall be made on forms furnished by the department and shall contain such information as the department requires for the enforcement of ORS 585.010 to 585.220.

(2) In addition to the other information the department requires, the applicant shall designate a person or persons in Oregon, together with the residence or business address of such person or persons, upon whom service of summons or any other legal process or notice can be made in suits or acts against the applicant brought in Oregon or for the service of notices required under ORS 585.010 to 585.220.

(3) Fraud or misrepresentation in making any application is sufficient grounds for the department to refuse to issue any license or to revoke any license issued under ORS 585.010 to 585.220.

585.040 Issuance of license; when license expires. Upon the filing of the application and the payment of appropriate fees, the State Department of Agriculture shall, if it is satisfied that the applicant is entitled thereto, issue to the applicant a license to conduct the business of wholesale produce dealer, retail produce peddler or cash buyer, as the case may be. The licenses shall be in the form the department prescribes and shall expire on June 30 of each year. [Amended by 1959 c.431 §3; 1985 c.353 §2]

585.045 Bond or letter of credit required for wholesale produce dealer. (1) Before any original license or renewal license to operate as a wholesale produce dealer is furnished, the applicant shall make and deliver to the State Department of Agriculture a surety bond of a company authorized to do business in this state, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in the amount of $15,000. The department shall prescribe the form for and approve the bond, which shall be payable to this state for the benefit of growers and conditioned upon the faithful performance of all obligations to growers by the wholesale produce dealer.

(2) The surety company may cancel the bond or the letter of credit issuer may cancel the letter of credit by sending a written notice by registered or certified mail to the department and to the wholesale produce dealer. The effective date of the cancellation is 60 days after the notice is received by the department.

(3) The department shall suspend the license of any wholesale produce dealer as of the effective date of the cancellation of the bond or letter of credit of the dealer. The

department shall withdraw such suspension of license upon its receiving a bond or letter of credit as authorized by subsection (1) of this section.

(4) A cash buyer is not required to furnish a bond or letter of credit to the department.

(5) Notwithstanding subsection (1) of this section, a person is required to make and deliver only one bond or letter of credit for any business operated under one entity or one ownership, regardless of the number of separate locations or places of business in this state. [1959 c.431 §§6,8; 1961 c.282 §1; 1985 c.426 §1; 1991 c.331 §89; 1997 c.631 §503]

585.047 Procedure on default of dealer. (1) Upon default of a wholesale produce dealer under any condition of the bond or letter of credit required by ORS 585.045, the State Department of Agriculture shall:

(a) Give reasonable notice to growers to file claims with the department.

(b) Fix a reasonable time within which such filing shall be done.

(c) Investigate each claim filed and reasonably verify the circumstances under which the claims accrued and the good faith of the claimants.

(2) With the approval of the claimants who filed claims, the department may settle such claims with the surety or letter of credit issuer, without filing legal action. Such settlement, unless appealed to the circuit court within 30 days as provided by law, is final between the surety or letter of credit issuer and all claimants covered by the bond or letter of credit.

(3) If any claimant does not agree with the findings of the department, the department shall file a declaratory judgment action without right to jury trial in the circuit court in the name of the State of Oregon for the benefit of the claimants as authorized by ORS chapter 28. Unless appealed as prescribed by law, the order of the court shall be final between the surety or letter of credit issuer and all claimants covered by the bond or letter of credit. [1961 c.282 §3; 1979 c.284 §176; 1991 c.331 §90]

585.050 Fees. Applicants for licenses shall pay to the State Department of Agriculture fees as follows:

(1) Every wholesale produce dealer shall pay a fee to be established by the department not to exceed $100 and, in addition, the wholesale produce dealer shall pay a fee of $5 for each motor vehicle used by the wholesale produce dealer in business to transport produce; but no motor vehicle shall be licensed under the $5 license fee unless the vehicle is registered and licensed by the Department of Transportation or by the motor vehicle licensing agency of another state, in the name of such wholesale produce dealer. If any wholesale produce dealer carries on such business at more than one establishment, location or place of business within this state, then a separate application shall be made and a separate license issued and an additional fee, to be established by the department not to exceed $100, paid for each separate establishment, location or place of business.

(2) Every retail produce peddler shall pay a fee to be established by the department not to exceed $20, which fee entitles the retail produce dealer to the use in the retail produce business of one vehicle and, in addition, the retail produce dealer shall pay an additional fee to be established by the department not to exceed $20 for each additional vehicle so used; but no motor vehicle shall be licensed under the license fee to be established by the department not to exceed $20 unless the vehicle is registered and licensed in the name of the retail produce peddler by the Department of Transportation or by the motor vehicle licensing agency of another state or unless the vehicle is used by the retail produce peddler under a lease approved by the department.

(3) Every cash buyer shall pay a license fee to be established by the department not to exceed $100. [Amended by 1959 c.431 §4; 1989 c.611 §1]

585.060 Refusal, suspension or revocation of licenses. (1) The State Department of Agriculture may refuse to grant a license, and may revoke or suspend any license, as the case may require, when it is satisfied of the existence of any of the following facts:

(a) That fraudulent charges or returns have been made by the applicant or licensee for the handling, sale or storage of, or for rendering any service in connection with the handling, sale or storage of, any produce.

(b) That the applicant or licensee has failed or refused to render a true account of sales, or to make a settlement thereon, or to pay for produce received, within the time and in the manner required by ORS 585.010 to 585.220.

(c) That the applicant or licensee has made any false statement as to the condition, quality or quantity of produce received, handled, sold or stored by the applicant or licensee.

(d) That the applicant or licensee, directly or indirectly, has purchased for the account of the applicant or licensee produce received by the applicant or licensee, upon consignment without prior authority from the consignor, together with price fixed by

consignor, or without promptly notifying the consignor of such purchase; but this does not prevent any wholesale produce dealer, selling produce on commission, from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of produce remaining unsold, if such wholesale produce dealer forthwith enters such transaction on the account of sales of the wholesale produce dealer.

(e) That the applicant or licensee has made fictitious sales or has been guilty of collusion to defraud any grower of produce.

(f) That any wholesale produce dealer to whom any consignment is made had reconsigned such consignment to another wholesale produce dealer for the purpose of receiving, collecting or charging by such means more than one commission for making the sale therefor for the consignor, unless by the consent of the consignor.

(g) That the licensee was intentionally guilty of fraud or deception in the procurement of the license.

(h) That the licensee or applicant has failed or refused to file with the department a schedule of charges for services in connection with produce handled on account of or as an agent of another.

(i) That the licensee has violated any provision of ORS 585.010 to 585.220.

(2) The provisions of ORS 561.305, pertaining to the revocation, suspension or refusal to issue licenses, apply to this section.

585.070 Publication of list of licensees. The State Department of Agriculture may publish in pamphlet form, or in any other manner at such times as it deems advisable, a list of all persons licensed under ORS 585.010 to 585.220. The list may include a list of all persons whose licenses have been refused, revoked or suspended under ORS 585.010 to 585.220.

585.080 Plates required for vehicles; other indicia of possession of license. (1) The State Department of Agriculture shall issue license plates to be attached to all vehicles used in business by any licensed wholesale produce dealer or retail produce peddler. The license plates shall be made in the form and manner prescribed by the department, and shall be issued for the number of vehicles to be used by the applicant in the produce business and for which application has been made and a fee paid as provided in ORS 585.010 to 585.220. Every licensee shall keep the department informed of all motor vehicles used by the licensee in the business of the licensee and of the number of the ownership certificate applying to each motor vehicle and the licensee shall notify the department of all changes in ownership of any such motor vehicle. In case of a decrease in the number of vehicles for which the licensee is entitled to use license plates, all excess plates shall immediately be returned to the department. The returned plates shall be retained by the department until the end of the license period and may be repossessed by the licensee upon proof that the licensee is again entitled to use them.

(2) All license plates and all other indicia of the possession of a license are at all times the property of the State of Oregon. Each licensee is entitled to the possession thereof only for the duration of the license, and the department may take possession of the plates or other indicia on the expiration, suspension or revocation thereof. Any refusal by a person in possession of such plates or other indicia to return the same to the department, upon the termination or suspension of the license under which they were issued, is a violation of ORS 585.010 to 585.220.

(3) No person shall operate any vehicle in the conduct of business as a wholesale produce dealer or as a retail produce peddler, unless the license plates provided for in this section are attached to the rear of the vehicle in plain sight and kept clean and readable.

585.090 Unlawful use of license certificate or plates. No licensee under ORS 585.010 to 585.220 shall loan or permit any other person to have in possession or to use any license certificate or plate issued to such licensee by the State Department of Agriculture. No person shall carry, exhibit or use in any manner any license certificate or plate, provided for by ORS 585.010 to 585.220, which has not lawfully been issued to such person, or after the license of the person has expired.

585.100 Questioning of person transporting produce. Every operator or owner of any vehicle transporting produce on any street or public highway within this state shall, upon request of any officer, employee or deputy of the State Department of Agriculture, or upon request of any state, county or local police officer, answer any questions concerning any produce being transported, and, if requested, shall sign a statement covering the answers.

585.105 Records to be kept by cash buyer. (1) Every cash buyer upon buying any produce from a grower shall make and keep accurate records of the transaction, including:

(a) The name and address of the grower.

(b) The date the produce is received and the amount paid.

(2) The records shall be available at reasonable times for inspection by authorized

representatives of the State Department of Agriculture. [1959 c.431 §9]

585.110 Record to be kept by wholesale dealer for purchases on credit. Every wholesale produce dealer, upon buying on credit any produce from any grower, shall promptly make and keep a correct record showing in detail the following with reference to the handling or sale of such produce:

(1) Name and address of grower.

(2) Date produce is received, and the amount thereof.

(3) Condition of the produce upon receipt of it by such person.

585.120 Record to be kept by wholesale dealer for commission sales. (1) Every wholesale produce dealer, having received any produce from a grower thereof for sale upon a commission basis, shall promptly make and keep a correct record showing in detail the following with reference to the handling, sale or storage of the produce:

(a) Name and address of consignor.

(b) Date received and the amount thereof.

(c) Grade and condition upon arrival.

(d) Date of such sale for account of consignor. Such records shall be open to inspection by the State Department of Agriculture at any time.

(e) Price for which sold.

(f) An itemized statement of the charges to be paid by consignor in connection with the sale.

(g) Each consignment of produce shall be given a lot number or other identifying mark. The number or mark shall appear on all sales tags and on any other essential records needed to show what the produce actually sold for.

(h) A detailed statement shall be kept on file of the filing of any claim or claims which have been or may be filed by such person selling on commission, against any person, for overcharges or for damages resulting from the injury or deterioration of such produce by the act or neglect or failure of such person. Such records shall be open to inspection by the department and by the consignor of produce for whom such claim or claims are made.

(2) Every wholesale produce dealer who sells produce on a commission basis shall retain a copy of all records, including sales tags, account sales, and other records covering each transaction, for a period of one year from the date of the transaction. The copy shall at all times be available for, and open to, the confidential inspection of the department and the interested consignor or any authorized representative of either.

585.130 Statement and remittances to consignor. (1) A copy of records and accounts of sales of produce, together with remittances in full of the amount realized by such sale, less the agreed commission and other charges, shall be delivered to the consignor upon the consummation of the sale, together with all moneys received by the wholesale produce dealer in payment for any consignment of produce, less the agreed commission and other charges, within 10 days after receipt of the moneys by any wholesale produce dealer who has sold produce on a commission basis, unless otherwise agreed in writing. The names and addresses of the purchasers need not be given.

(2) The money returns, if any, collections or damages received by a person handling produce on commission, for and on behalf of a consignor of produce by reason of overcharges, damages or deterioration of the produce by the act or neglect or failure of any person forthwith shall be paid to the consignor, less charges for collection thereof in accordance with the schedule of charges filed under ORS 585.010 to 585.220.

585.140 Inspection by department to determine condition of produce when in dispute; fee; certificate. If there is a dispute or disagreement between a consignor and a wholesale produce dealer, selling on a commission basis, at the time of delivery as to condition, quality, grade, pack, quantity or weight of any lot, shipment or consignment of produce, the State Department of Agriculture shall furnish, upon the payment of a reasonable fee therefor by the requesting party, a certificate establishing the condition, quality, grade, pack, quantity or weight of the lot, shipment or consignment. The certificate is prima facie evidence in all courts of this state as to the recitals thereof at the time the inspection was made.

585.150 Enforcement; investigation and adjustment of controversies; assignment of claims to director; recovery on claims. (1) The State Department of Agriculture shall enforce the provisions of ORS 585.010 to 585.220, and to that end the department has the authority granted in this section.

(2) The department may investigate and attempt equitably to adjust controversies between any grower or growers, and any wholesale produce dealer, retail produce peddler, or any person acting or assuming to act in the capacity of any of such persons.

(3) The department may take assignments of claims, arising out of any controversies between the parties named in subsection (2) of this section, in trust for the assigning grower or growers. All such assignments shall run to the Director of Agriculture and

successors in office. The Director of Agriculture may, as assignee of any such claim, sue any of the persons mentioned in subsection (2) of this section or any combination of such persons. The director shall not bring a suit or action on any claim until the parties to be sued have been notified of the assignment of claims and have been given a reasonable opportunity to make an equitable adjustment thereof with the department. Any claim so assigned to the director authorizes the director to make any adjustment thereof which, in the opinion of the director, is equitable. The moneys received by the department on any claims so assigned to it shall be paid into the Department of Agriculture Account; and such moneys shall be paid to the assignor after first deducting any costs and expenses incurred by the department in the collection of any such claim, and also after deducting five percent of any sum collected. The five percent deducted shall be used, together with other moneys collected under the provisions of ORS 585.010 to 585.220, to pay the expenses in the administration of ORS 585.010 to 585.220.

(4) The Director of Agriculture may make complaint in a criminal action for any violation of any provision of ORS 585.010 to 585.220 which constitutes a crime. The director shall prosecute all legal proceedings in official capacity, but in the name of the State of Oregon. The director may act through any authorized officer, employee or deputy of the department in any proceeding authorized by this section.

(5) The court may award reasonable attorney fees to the director if the director prevails in an action under subsection (3) of this section. The court may award reasonable attorney fees to a defendant who prevails in an action under subsection (3) of this section if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court. [Amended by 1981 c.897 §69; 1995 c.696 §31]

585.160 Records of department prima facie evidence. Copies of records, inspection certificates and certified reports on file in the office of the State Department of Agriculture are prima facie evidence of the matters therein contained.

585.170 Right of access to vehicles and premises. All authorized officers, employees and deputies of the State Department of Agriculture shall have, at all times, free and unimpeded access to all places, buildings, yards, warehouses, markets, storage, transportation facilities and vehicles in which any produce is kept, stored, handled or transported.

585.175 Periodic inspections. The State Department of Agriculture may make periodic inspections of fruits and produce sold or held for sale in wholesale and retail channels to verify if there is compliance with the laws relating to grades, standards, quality and condition of such commodities. [1959 c.431 §10]

585.180 Rules and regulations. The State Department of Agriculture may make, from time to time, all needful rules and regulations for the administration of ORS 585.010 to 585.220, and provide the necessary forms to carry those sections into effect. The rules and regulations shall be printed in pamphlet form as provided in ORS 561.190.

585.190 Disposition of moneys received; continuing appropriation; disposition of fines. (1) Except for fees paid under ORS 585.050, all fees received by the State Department of Agriculture pursuant to the provisions of this chapter shall be paid to the State Treasurer, who shall place the moneys in the General Fund of the state to the credit of the Department of Agriculture Account. All such funds paid to the State Treasurer, or so much thereof as is necessary, shall be a continuing appropriation from the Department of Agriculture Account and shall be used for the purpose of carrying out the provisions of this chapter. The fees paid to the department under ORS 585.050 shall be deposited into the Department of Agriculture Service Fund, and such funds are continuously appropriated to the department for the purpose of administering and enforcing this chapter.

(2) All fines collected pursuant to ORS 585.990 shall go into the fruit inspection fund of the county where collected if that county has a fruit inspection fund, otherwise the fines shall go into the general fund of the county. [Amended by 1979 c.499 §9]

585.200 Enjoining violations. In addition to other penalties and enforcement provisions contained in ORS 585.010 to 585.220 and 585.990, circuit courts hereby are vested with authority, upon petition by the Director of Agriculture, to enjoin any violation or threatened violation of ORS 585.010 to 585.220.

585.210 Prohibited acts. No person who assumes or attempts to act as a wholesale produce dealer or retail produce peddler without a license, and no wholesale produce dealer handling produce upon a commission basis, shall do any of the following:

(1) Impose false charges for handling or services in connection with the account of any grower of such produce.

(2) Fail to account promptly, correctly, fully and properly and to make settlement

therefor as provided in ORS 585.010 to 585.220.

(3) Intentionally make any false or misleading statement or statements as to market conditions.

(4) Make fictitious sales or be guilty of collusion to defraud the grower.

(5) Directly or indirectly purchase for the account of the person or wholesale produce dealer, produce received by the person or wholesale produce dealer, upon consignment without prior authority from the consignor, or fail promptly to notify the consignor of such purchases, if any, on the account of the person or wholesale produce dealer; but this subsection shall not be construed to prevent any wholesale produce dealer handling produce upon a commission basis from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of produce remaining unsold, if such wholesale produce dealer forthwith enters such transaction on account of sales of the wholesale produce dealer.

(6) Intentionally make any false statement as to the grade, condition, markings, quality or quantity of produce shipped or packed in any manner.

(7) Violate any other provision of ORS 585.010 to 585.220.

585.213 Payment by wholesale produce dealer for purchases from grower; penalty; damage action. (1) In the absence of a contract providing otherwise, any wholesale produce dealer who purchases produce from a grower shall make full payment therefor not later than the 30th day after the day the wholesale produce dealer takes delivery of the harvested commodity.

(2) Any wholesale produce dealer who fails to make payment as required by subsection (1) of this section shall pay, in addition to the amount due, interest thereon at the rate of one and one-half percent per month.

(3) In addition to any other remedies provided by law, a grower injured by a violation of subsection (1) of this section may bring an action for damages sustained as a result of the violation. In any such action, the prevailing party shall be allowed, in addition to costs and disbursements, reasonable attorney fees at trial and on appeal. [1985 c.426 §3]

585.215 Payment for purchases from wholesale produce dealer; damage action. (1) Notwithstanding any other provision of law, in the absence of a contract providing otherwise, any person who purchases produce from a wholesale produce dealer shall make full payment therefor not later than the 30th day after the day the person took delivery of the produce.

(2) In addition to any other remedies provided by law, a wholesale produce dealer injured by a violation of subsection (1) of this section may bring an action for damages sustained as a result of the violation. In any such action, the prevailing party shall be allowed, in addition to costs and disbursements, reasonable attorney fees at trial and on appeal. [1985 c.426 §4]

585.220 Department employees have power of peace officers; jurisdiction of courts. Duly authorized employees of the State Department of Agriculture have the power and authority of peace officers for the purpose of enforcing the provisions of ORS 585.010 to 585.220. Justice courts have concurrent jurisdiction with circuit courts of this state in all proceedings to enforce the provisions of ORS 585.010 to 585.220.

585.310 [1957 c.454 §1; repealed by 1959 c.512 §2]

585.320 [1957 c.454 §2; repealed by 1959 c.512 §2]

585.330 [1957 c.454 §3; repealed by 1959 c.512 §2]

585.340 [1957 c.454 §4; repealed by 1959 c.512 §2]

585.350 [1957 c.454 §5; repealed by 1959 c.512 §2]

585.360 [1957 c.454 §6; repealed by 1959 c.512 §2]

585.370 [1957 c.454 §7; repealed by 1959 c.512 §2]

585.380 [1957 c.454 §8; repealed by 1959 c.512 §2]

585.390 [1957 c.454 §9; repealed by 1959 c.512 §2]

585.400 [1957 c.454 §11; repealed by 1959 c.512 §2]

585.410 [1957 c.454 §10; repealed by 1959 c.512 §2]

585.420 [1957 c.454 §12; repealed by 1959 c.512 §2]

585.430 [1957 c.454 §13; repealed by 1959 c.512 §2]

585.990 Penalties. Violation of any provision of ORS 585.010 to 585.220 is punishable, upon conviction, by a fine of not more than $1,000, or by confinement in the county jail for not more than one year, or both. [Subsection (2) of 1957 Replacement Part enacted as 1957 c.454 §14; 1959 c.512 §1]