TITLE 47

AGRICULTURAL MARKETING AND WAREHOUSING

Chapter 576. Agricultural Marketing Generally
577. Oregon Beef Council
578. Oregon Wheat Commission
583. Milk Marketing, Production and Distribution
585. Produce Dealers
586. Warehouses; Grain and Commodity Inspection
587. Storage of Grain as Basis of Farm Credit

Chapter 576

2011 EDITION

Agricultural Marketing Generally

MARKET DEVELOPMENT AND RESEARCH

576.006 Definitions for ORS 576.006 to 576.022
576.009 Agricultural Development Division
576.013 Purpose of market development and commodity development services; powers of department; limitations
576.019 Discrimination against any product or dealer prohibited
576.022 Authority and functions of Oregon State University unaffected; department may seek information from university
576.024 Department authorized to inspect records and businesses for economic study purposes
576.035 Market news service in Klamath Basin, central Oregon and Malheur areas

COMMODITY COMMISSIONS

(Generally)

576.051 Definitions for ORS 576.051 to 576.455
576.053 Short title
576.054 Legislative findings
576.062 Establishment of commodity commissions
576.066 Department oversight of commodity commissions; rules

(Organization)

576.206 Appointment of temporary members; rules; appointment of commissioners; commissioner qualifications; compensation
576.215 Ex officio members of commission
576.225 Qualifications of members
576.245 Office vacant when member ceases to be qualified
576.255 Removal of members
576.265 Travel and other expenses of members; per diem; rules
576.275 Meeting place of commission
576.285 Commission organization; meetings
576.304 Authority of commodity commissions; rules
576.306 Independent contractors performing services for commission; rentals and acquisitions; rules
576.307 Provision of state services to commission
576.309 Commission furnishing services, facilities and materials to other state agencies
576.311 Commission exempt from certain financial administration laws
576.315 Grants, donations and gifts
576.317 Intellectual property; rules
576.320 Commission employees not subject to state personnel compensation plans; commission not subject to office space regulation; fees for administrative services; rules

(Assessment and Budgeting)

576.325 Levy and collection of assessments; commission rules regulating sale activities; maximum assessment rates
576.327 Exemptions from assessment; rules
576.335 Report by person responsible for collecting assessment
576.345 Producer to make reports of and pay assessment moneys on certain sales
576.351 Records of person required to pay or collect assessment; inspections and audits
576.355 Penalty for delaying transmittal of funds

576.365 Penalty for failure to relinquish assessment moneys to commission; civil action or other remedies
576.370 Disputes over assessment amounts; rules governing disputes and establishing assessment periods
576.372 Authority of Oregon Alfalfa Seed Commission to adopt rules authorizing refunds; effect
576.375 Payment of commission moneys to authorized agent; deposits and withdrawals; investments
576.385 Bond or letter of credit required of person authorized to receive or disburse commission moneys
576.392 Cancellation of uncollectible assessment; subsequent collection
576.395 Books, records and accounts of commission
576.410 "Fiscal year" defined
576.416 Preparation of commission budget; annual financial statement
576.420 Expenditures prohibited unless budget procedure complied with
576.440 Limitation on expenditures
576.445 Unforeseen expenditures
576.455 Moneys of abolished commission
576.595 Sales are in commercial channels

MEDIATION OF MARKETING DISPUTES

576.610 Definitions for ORS 576.610 to 576.650
576.620 Department to perform mediation services; employees; qualifications
576.630 Request for mediation; meeting with parties
576.640 Rules
576.650 Cooperation by state agencies

PAYMENT FOR AGRICULTURAL COMMODITIES

(Generally)

576.700 Definitions for ORS 576.700 to 576.710
576.705 Processors required to pay for commodities within 30 days after delivery; interest on late payments
576.710 Applicability of ORS 576.705

(Seeds)

576.715 Definitions for ORS 576.715 to 576.744
576.718 Seed production contract terms
576.721 Payment due date provisions in contracts authenticated prior to planting
576.726 Title; bailments; liens
576.729 Seed purchase contract terms
576.732 Contract modification; damages for breach
576.735 Seed not meeting quality standards
576.738 Seed dealer failure to timely make payment; fee
576.741 Seed dealer financial assurance; rules; license refusal; agents
576.744 Rules; mediation services
576.747 Reporting adoption of rules regarding dealer financial assurance

OREGON WINE BOARD; WINE CELLAR

576.750 Definitions for ORS 576.750 to 576.775
576.751 Legislative findings
576.753 Oregon Wine Board
576.756 Board purpose and duties
576.759 Board powers
576.763 State wine cellar; sources; uses
576.766 Rules; board employees
576.768 Strategic plan; budget; rules
576.771 Payment of tax; delayed payment; records; inspections and audits
576.775 Disposition of moneys; research and promotion

PENALTIES

576.991 Penalties

576.005 [1953 c.489 §1; 1955 c.732 §1; renumbered 576.051]

MARKET DEVELOPMENT AND RESEARCH

576.006 Definitions for ORS 576.006 to 576.022. As used in ORS 576.006 to 576.022:

(1) "Department" means the State Department of Agriculture of the State of Oregon.

(2) "Farm products" means all agricultural, floricultural, vegetable and fruit products of the soil, livestock and meats, poultry, eggs, dairy products, and any and all products which have their situs of production on the farm.

(3) "Food products" means any and all products either in a natural or processed state used by human or animal as food. [1955 c.572 §1]

576.009 Agricultural Development Division. There is established within the State Department of Agriculture an Agricultural Development Division which shall have the powers and duties conferred by ORS 576.006 to 576.022, and as specified by the Director of Agriculture. The Agricultural Development Division shall consist of a market development service and a commodity development service. [1955 c.572 §2; 1983 c.740 §221; 1985 c.623 §3]

576.010 [Repealed by 1953 c.119 §2]

576.013 Purpose of market development and commodity development services; powers of department; limitations. (1) The purpose of the market development service of the Agricultural Development Division shall be to assist in the establishment and development of new markets and to maintain or expand existing domestic and foreign markets for farm and food commodities produced or processed in this state. The purpose of the commodity development service of the Agricultural Development Division shall be to assist in the development and improvement of farm and food commodities and their values and uses.

(2) In furthering the purpose of the market development service, the State Department of Agriculture may:

(a) Collect and disseminate information relating to the availability, quality and uses of farm and food commodities produced or processed in this state, including participation in demonstrations, fairs and exhibits;

(b) Serve as an intermediary between prospective purchasers and sellers of farm and food commodities produced or processed in this state as to source of supply and demand;

(c) After notice to and with the approval of the Governor, represent the state in matters of legislation or rulemaking affecting the establishment, development, maintenance or expansion of markets for farm and food commodities produced or processed in this state;

(d) Cooperate with and aid producers, processors, distributors and prospective purchasers of farm and food commodities in establishing, or improving and maintaining, an efficient system of production, processing, distribution and marketing of farm and food commodities;

(e) Investigate delays, embargoes, conditions and practices, charges and rates in the marketing, transportation and handling of farm and food commodities produced or processed in this state, and when an investigation discloses a probable violation of state or federal law, make recommendations to the proper state or federal authorities for appropriate action;

(f) Engage in negotiations with common and contract carriers and initiate or participate in the prosecution of proceedings before agencies engaged in freight rate regulation within or without this state in matters relating to the establishment of new freight rates, the modification of existing freight rates or to unjust, unreasonable or discriminatory rates or practices affecting the cost of transportation, production or processing of farm or food commodities produced or processed in this state;

(g) Investigate the advisability and need for establishment of terminal, regional, assembly, dock and other distributing facilities for the delivery, sale and distribution of farm and food commodities at or near the point of purchase or use, and advise and cooperate with public or private agencies or organizations in promoting the establishment, construction or acquisition of the facilities for public use and make recommendations as to their operations;

(h) Accept grants from public or private agencies, organizations or persons, with any grant treated as a trust fund, separate and distinct from the General Fund, within the meaning of ORS chapters 291 and 293;

(i) Consult with other states in development of joint programs for the establishment, development, maintenance or expansion of domestic and foreign markets on a mutual basis;

(j) Cooperate with the Oregon Business Development Department of this state in foreign and domestic marketing matters of common interest; and

(k) Enter into agreements with public and private entities in new or existing markets to assist the establishment, development, maintenance or expansion of those

markets and provide for sampling, testing, certification or other procedures or processes to facilitate the movement of, or optimize the value of, farm and food products.

(3) In furthering the purpose of the commodity development service, the department may:

(a) Collect and disseminate information relating to new or alternate crop production, processing and marketing feasibilities to producers of farm and food commodities;

(b) Assist the commodity commissions in carrying out mutual or joint scientific research efforts and mutual or joint development of the commercial values and new and additional uses of their commodities; and

(c) Accept grants from public or private agencies, organizations or persons, with any grant treated as a trust fund, separate and distinct from the General Fund, within the meaning of ORS chapters 291 and 293.

(4) Nothing in ORS 576.006 to 576.022 shall authorize, or modify the limitations on authority under ORS 561.170 for, the Agricultural Development Division, or its staff to:

(a) Engage in any commercial transaction involving farm or food commodities as purchaser, seller, broker or dealer; or

(b) Acquire or own any farm or food commodities or real property associated with them. [1955 c.572 §3; 1985 c.623 §4; 1989 c.966 §64; 2009 c.188 §1]

576.015 [1953 c.489 §37; renumbered 576.053]

576.017 [1955 c.572 §4; repealed by 1973 c.794 §34]

576.018 [1985 c.623 §2; repealed by 1993 c.742 §60]

576.019 Discrimination against any product or dealer prohibited. In the performance of duties, under ORS 576.006 to 576.022, no official or employee of the State Department of Agriculture shall discriminate against any farm or food product, or against any producer, processor, distributor or dealer of any such products. [1955 c.572 §5]

576.020 [Repealed by 1953 c.119 §2]

576.022 Authority and functions of Oregon State University unaffected; department may seek information from university. Nothing in ORS 576.006 to 576.022 shall be construed to limit, alter, repeal or duplicate the existing authority and functions of Oregon State University enumerated in ORS 561.362 and full effect shall be given to the provisions of ORS 561.364 and 561.366. The State Department of Agriculture may call upon Oregon State University for such technical and statistical information as it may need and as the university may be able to provide. [1955 c.572 §7]

576.024 Department authorized to inspect records and businesses for economic study purposes. (1) It is necessary for the economy of this state, the livestock industry and the welfare of the consuming public that the department obtain statistical information for economic studies of the livestock industry including the volume of production of livestock in this state; the channels into which such livestock is marketed; the total consumption of meat in this state; the types and quantities consumed and the sources thereof; and such other information as is pertinent to reveal additional potential markets for livestock produced in this state.

(2) In order to carry out and maintain this continuing study, the department is authorized during business hours to inspect the records of places or businesses which handle, store or sell meat animals, or meat as defined in ORS 619.010 to 619.071, 619.370 and 619.993.

(3) The department, after public hearing under ORS chapter 183, may require periodic reporting from the places or businesses described in this section and require the furnishing to the department of the data or information which may be needed in continuing the comprehensive study as authorized in this section. [1967 c.388 §2; 1973 c.174 §19; 1973 c.794 §29; 1983 c.740 §222]

576.030 [Repealed by 1953 c.119 §2]

576.035 Market news service in Klamath Basin, central Oregon and Malheur areas. The State Board of Higher Education, acting through the Federal Cooperative Extension Service of Oregon State University, shall cooperate with the Agriculture Marketing Service of the United States Department of Agriculture and with the appropriate offices of adjoining states to establish and maintain a food product market news service in the Klamath Basin and provide such services for the central Oregon and Malheur areas. [1961 c.560 §1]

576.040 [Repealed by 1953 c.119 §2]

576.041 [1967 c.265 §1; repealed by 1971 c.28 §1]

576.043 [1967 c.265 §2; repealed by 1971 c.28 §1]

576.044 [1977 c.198 §6; 1985 c.623 §5; 2003 c.604 §§28,29; renumbered 576.066 in 2003]

576.045 [1967 c.265 §3; repealed by 1971 c.28 §1]

576.047 [1967 c.265 §4; repealed by 1971 c.28 §1]

576.049 [1967 c.265 §5; repealed by 1971 c.28 §1]

576.050 [Repealed by 1953 c.119 §2]

COMMODITY COMMISSIONS

(Generally)

576.051 Definitions for ORS 576.051 to 576.455. As used in ORS 576.051 to 576.455, unless the context requires otherwise:

(1) "Commercial channels" means the sale of the commodity for which a commodity commission is established for use as food, industrial, agricultural or chemurgic use, when sold to any commercial buyer or to any person who resells the commodity or any product derived therefrom.

(2) "Commission" means a commodity commission established under ORS 576.051 to 576.455.

(3) "Commodity" means any distinctive type of agricultural, horticultural, viticultural, vegetable, animal or seafood product, or any class, variety or utilization thereof, in a natural or processed state, including bees and honey but not including timber or timber products. The Director of Agriculture may determine what types or subtypes of commodity may be classed together as a commodity for the purposes of ORS 576.051 to 576.455.

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

(5) "Director" means the Director of Agriculture.

(6) "First purchaser" means any person who buys the commodity for which a commission is established from the producer in the first instance, or handler who received the commodity in the first instance from the producer for resale or processing.

(7) "Handler" means any producer, processor, distributor or other person engaged in the handling or marketing of or dealing in the commodity for which a commission is established, whether as an owner, agent, employee, broker or otherwise.

(8) "Producer" means a person that engages in, or has engaged in, the business of growing, producing or procuring within this state, or in the rivers or offshore waters of this state except the Columbia River, a commodity for market or for delivery or transfer to others owning or holding title to the commodity. "Producer" includes a landowner, landlord, tenant, sharecropper, boat skipper or other person that participates in the growing, producing or procuring of a commodity and receives a share of the commodity.

(9) "Regional commission" means a commission that functions only within a specified area of this state consisting of one or more entire counties. [Formerly 576.005; 1957 c.447 §1; 1959 c.596 §1; 1977 c.198 §7; 2003 c.604 §31]

576.053 Short title. ORS 576.051 to 576.455 and 576.991 (2) may be known and cited as the Commodity Commission Act. [Formerly 576.015; 1983 c.740 §223; 2011 c.597 §235]

576.054 Legislative findings. (1) The Legislative Assembly finds that:

(a) Commodity industries are vital elements of the state economy. Commodity industries:

(A) Are sources of substantial employment for the citizens of this state;

(B) Produce needed tax revenues for the support of state and local government;

(C) Encourage responsible stewardship of valuable land and marine resources; and

(D) Produce substantial quantities of necessary food for the state, nation and world.

(b) Commodity commissions support commodity industries and enhance and preserve the economic interests of the state.

(c) Commodity commissions function in the same manner as a broad range of other programs established by the Legislative Assembly that are funded by the public through fees assessed according to the relationship of the fee payer to a particular program.

(d) Commodity commissions are not established to benefit individual persons engaged in commodity industries, but are intended to improve the overall conditions for the particular commodity for which a commission is established and thereby benefit the overall economy of the state and all the citizens of the state.

(e) Mandated cooperative efforts engaged in by commodity commissions are a proven, effective method to avoid economic waste and maintain stable agricultural markets.

(f) It is in the public interest that:

(A) Support for Oregon's commodity industries be clearly expressed;

(B) Adequate protection be given to commodities and commodity uses, activities and operations; and

(C) Each commodity be promoted individually and as part of a stabilized comprehensive industry by increasing consumption of commodities in this state and the United States and internationally.

(2) It is the intent of the Legislative Assembly that commodity commissions do the following for the purpose of serving commodity industries and the citizens of this state:

(a) Participate in the formulation and implementation of public policy through expressive activities.

(b) Reflect a continuing commitment by the state to commodity industries that are integral to the economy of this state.

(c) Represent a policy of support for persons engaged in commodity industries and

for their critical role in the economy of this state, especially the economy of rural areas.

(d) Provide benefits to entire commodity industries and all the citizens of this state.

(e) Enhance the image of Oregon commodities for the purpose of increasing the overall demand for those commodities. To achieve that purpose, the Legislative Assembly intends that commodity commissions operate primarily to create a more receptive environment for commodities and for the individual efforts of persons engaged in commodity industries and thereby complement individual, targeted and specific activities.

(f) Use mandatory cooperative efforts to complement state, federal and international laws and programs.

(g) Protect the citizens of this state by educating them regarding the quality, care and methods used in the production of Oregon commodities.

(h) Increase knowledge regarding the healthful qualities and dietetic value of Oregon commodities.

(i) Support and engage in research programs and activities that benefit the planting, production, harvesting, handling, processing, marketing and use of Oregon commodities. [2003 c.604 §2]

576.055 [1953 c.489 §2; subsection (2) formerly part of 576.295; 1957 c.447 §2; 1959 c.596 §2; 1965 c.515 §1; repealed by 2003 c.604 §109]

576.060 [Repealed by 1953 c.119 §2]

576.062 Establishment of commodity commissions. The following commodity commissions are established as state commissions:

(1) The Oregon Dairy Products Commission.

(2) The Oregon Hazelnut Commission.

(3) The Oregon Dungeness Crab Commission.

(4) The Oregon Salmon Commission.

(5) The Oregon Albacore Commission.

(6) The Oregon Sheep Commission.

(7) The Oregon Potato Commission.

(8) The Oregon Alfalfa Seed Commission.

(9) The Oregon Blueberry Commission.

(10) The Oregon Clover Seed Commission.

(11) The Oregon Fine Fescue Commission.

(12) The Oregon Hop Commission.

(13) The Oregon Mint Commission.

(14) The Oregon Orchardgrass Seed Producers Commission.

(15) The Oregon Processed Vegetable Commission.

(16) The Oregon Raspberry and Blackberry Commission.

(17) The Oregon Ryegrass Growers Seed Commission.

(18) The Oregon Strawberry Commission.

(19) The Oregon Sweet Cherry Commission.

(20) The Oregon Tall Fescue Commission.

(21) The Oregon Trawl Commission. [2003 c.604 §15; 2003 c.749 §18; 2007 c.132 §3; 2007 c.146 §3; 2009 c.367 §3; 2011 c.181 §1]

576.065 [1953 c.489 §3; 1957 c.447 §3; 1959 c.596 §3; repealed by 2003 c.604 §109]

576.066 Department oversight of commodity commissions; rules. (1) The State Department of Agriculture shall:

(a) Monitor the practices or methods used or proposed for use by any commodity commission in carrying out the goals and needs disclosed by the budget of the commission;

(b) Promote cooperation among the several commissions, the Oregon Beef Council and the Oregon Wheat Commission and assist in the interchange of information and experience among those entities;

(c) Carry out the assigned organizational procedures under ORS 576.051 to 576.455, including the appointment and removal of members of the commission;

(d) Review budgets submitted to the Director of Agriculture by a commodity commission under ORS 576.416; and

(e) Adopt rules to carry out the provisions of ORS 576.051 to 576.455.

(2) The department shall review, and may approve or disapprove, plans and projects recommended by a commodity commission for commodity promotion, advertising and research and for the dissemination of consumer and commodity industry information. In reviewing plans and projects recommended by a commodity commission, the department shall consider whether the plan or project information is:

(a) Factual;

(b) Not disparaging to other commodities; and

(c) Consistent with the purposes of ORS 576.051 to 576.455. [Formerly 576.044; 2007 c.55 §1]

576.070 [Repealed by 1953 c.119 §2]

576.075 [1953 c.489 §4; 1957 c.447 §4; 1959 c.596 §4; repealed by 2003 c.604 §109]

576.078 [Formerly part of 576.085; 1959 c.596 §5; repealed by 2003 c.604 §109]

576.080 [Repealed by 1953 c.119 §2]

576.085 [1953 c.489 §5; 1957 c.447 §5; part renumbered 576.078; 1959 c.596 §6; repealed by 2003 c.604 §109]

576.090 [Repealed by 1953 c.119 §2]

576.091 [1959 c.596 §72; repealed by 2003 c.604 §109]

576.095 [1953 c.489 §6; 1957 c.447 §6; 1959 c.596 §7; repealed by 2003 c.604 §109]

576.100 [Repealed by 1953 c.119 §2]

576.105 [1953 c.489 §7; repealed by 2003 c.604 §109]

576.110 [Repealed by 1953 c.119 §2]

576.115 [1953 c.489 §8; 1957 c.447 §7; repealed by 2003 c.604 §109]

576.120 [Repealed by 1953 c.119 §2]

576.125 [1953 c.489 §9; 1955 c.732 §2; 1957 c.447 §8; repealed by 2003 c.604 §109]

576.130 [Repealed by 1953 c.119 §2]

576.135 [1953 c.489 §34; 1983 c.438 §1; repealed by 2003 c.604 §109]

576.140 [Repealed by 1953 c.119 §2]

576.145 [1953 c.489 §35; repealed by 2003 c.604 §109]

576.150 [Repealed by 1953 c.119 §2]

576.155 [1977 c.526 §2; repealed by 2003 c.604 §109]

576.160 [Repealed by 1953 c.119 §2]

576.165 [1983 c.688 §2; 1989 c.185 §1; repealed by 2003 c.604 §109]

576.170 [Repealed by 1953 c.119 §2]

576.171 [1999 c.672 §4; 2001 c.504 §3; repealed by 2003 c.604 §109]

576.175 [1989 c.748 §2; 1991 c.894 §1; 1999 c.178 §1; repealed by 2003 c.604 §109]

576.180 [Repealed by 1953 c.119 §2]

576.190 [Repealed by 1953 c.119 §2]

576.200 [Repealed by 1953 c.119 §2]

(Organization)

576.205 [1953 c.489 §11; 1957 c.447 §9; 1959 c.596 §8; 1977 c.198 §8; repealed by 2003 c.604 §3 (576.206 enacted in lieu of 576.205)]

576.206 Appointment of temporary members; rules; appointment of commissioners; commissioner qualifications; compensation. (1) Upon the establishment of a commodity commission, the Director of Agriculture shall appoint five temporary members to the commission. In appointing the temporary members, the director shall give consideration to any recommendations by other commodity commissions, commodity growers and commodity grower associations. A majority of the temporary members must be producers of the commodity that is the subject of the commission and at least one member must be a handler of the commodity.

(2) The temporary members shall adopt rules for the commission in accordance with ORS chapter 183, including but not limited to rules establishing the number and geographic representation of the commissioners and rules providing for the removal of commissioners. The terms of the temporary members expire on the date that one or more commissioners are appointed under subsection (3) of this section. A qualified temporary member is eligible for appointment to a term on the commission under subsection (3) of this section.

(3) The director shall appoint the commissioners for a commodity commission in accordance with the rules adopted under subsection (2) of this section. In appointing the commissioners, the director shall give consideration to any recommendations by other commodity commissions, commodity growers and commodity grower associations.

(4) A majority of the commissioners must be producers of the commodity that is the subject of the commission. At least one commissioner must be a handler of the commodity. One commissioner must be a member of the public not associated with the production or handling of the commodity. All commissioners other than handlers and the member of the public must be producers.

(5) The term of a commissioner appointed under subsection (3) of this section is four years unless a shorter term is established by commission rule. A commissioner is eligible for reappointment unless otherwise provided by commission rule. Before the expiration of a commissioner's term, the director shall appoint a successor to assume office upon expiration of the term. If there is a vacancy on a commission for any cause, the director shall appoint a person to the unexpired term.

(6) The commission shall select one member to serve as chairperson and another member to serve as vice chairperson, with such duties and powers as the commission deems appropriate to those offices.

(7) A temporary member of a commission or a commissioner is entitled to compensation and expenses in the manner and amounts provided in ORS 292.495. Claims for compensation earned and expenses incurred in performing the functions of the commission shall be paid out of funds available to the commission. [2003 c.604 §4 (enacted in lieu of 576.205); 2003 c.604 §5; 2007 c.55 §2]

576.210 [Repealed by 1953 c.119 §2]

576.215 Ex officio members of commission. The Director of Agriculture and the Dean of the College of Agricultural Sciences of Oregon State University, or their respective official representative, shall be ex officio members of a commodity commission, without right to vote. When a commission is established for a seafood commodity, the chairperson of the State Fish and Wildlife Commission or the official representative of the chairperson shall also be an ex officio member of the commission, without right to vote. ORS 576.206 and 576.225 to 576.255 do not apply to ex officio members. [1953 c.489 §12; 1957 c.447 §10; 1959 c.596 §9; 1995 c.79 §311; 2003 c.604 §32]

576.220 [Repealed by 1953 c.119 §2]

576.225 Qualifications of members. (1) A member of a commodity commission must, during the term of office of the member:

(a) Be a citizen of the United States.

(b) Be a bona fide resident of the state.

(c) Have an active interest in the positive development and economic growth of the commodity industry in Oregon.

(2) A producer member of a commission must have paid an assessment adopted by the commission, if any, on the commodity in each of the preceding three calendar years. A handler member of a commission must have collected an assessment adopted by the commission, if any, on the commodity in each of the preceding three calendar years. [1953 c.489 §13; 1957 c.447 §11; 2003 c.604 §33]

576.235 [1953 c.489 §14; 1965 c.515 §2; 1977 c.198 §9; repealed by 2003 c.604 §109]

576.245 Office vacant when member ceases to be qualified. The Director of Agriculture shall immediately declare the office of any appointed producer or handler member of a commodity commission vacant whenever the director finds that such member has ceased to be an active producer or handler in this state, has become a resident of another state or is unable to perform the duties of office. [1953 c.489 §15; 1957 c.447 §12; 1965 c.515 §3; 1977 c.198 §10; 2003 c.604 §34; 2005 c.22 §390]

576.255 Removal of members. (1) The Director of Agriculture may remove any member of a commodity commission for inefficiency, neglect of duty or misconduct in office, after a public hearing and after serving upon the member a copy of the charges against the member, together with a notice of the time and place of the hearing, at least 10 days prior to such hearing. At the hearing the member shall be given an opportunity to be heard in person or by counsel and shall be permitted to present evidence to answer the charges and explain the facts alleged against the member.

(2) In every case of removal, the director shall file in the office of the Secretary of State a complete statement of all charges against the member, the findings of the director and a record of the entire proceedings held in connection with the charges. [1953 c.489 §16; 1965 c.515 §4; 1977 c.198 §11; 2005 c.22 §391]

576.265 Travel and other expenses of members; per diem; rules. (1) A commodity commission may adopt rules establishing the amount of payment that a member of the commission receives under ORS 292.495 (1) for each day or portion of a day during which the member is actually engaged in the performance of official duties. The amount may exceed, but not be less than, the amount of payment that would otherwise be provided under ORS 292.495 (1).

(2) Members, officers and employees of a commodity commission shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties. Subject to any limitations described under ORS 292.495 (2), the commission shall adopt uniform and reasonable rules governing the incurring and paying of such expenses. [1953 c.489 §17; 1959 c.596 §10; 2005 c.22 §392; 2009 c.137 §1]

576.275 Meeting place of commission. A commodity commission may establish a meeting place anywhere within this state the commission selects, but the selection of the location must be guided by consideration for the convenience of the majority of those persons most likely to have business with the commission or be affected by the acts of the commission. This section does not prohibit a commission from participating in meetings outside this state for purposes of advancing the work of the commission. [1953 c.489 §18; 2003 c.604 §35]

576.285 Commission organization; meetings. A commodity commission shall meet as soon as practicable for the purposes of organizing. It shall elect a chairperson and a secretary-treasurer from among its members. It shall adopt a general statement of policy for guidance, and shall transact such other business as is necessary to start the work of the commission. Thereafter, the commission shall meet regularly once each six months, and at such other times as called by the chairperson. The chairperson may call special meetings at any time, and shall call a special meeting when requested by two or more members of the commission. [1953 c.489 §19; 2005 c.22 §393]

576.295 [1953 c.489 §10; 1955 c.732 §3; part renumbered 576.055; 1959 c.596 §11; repealed by 2003 c.604 §109]

576.304 Authority of commodity commissions; rules. A commodity commission may:

(1) Appoint all subordinate officers and employees of the commission, prescribe their duties and fix their compensation.

(2) Levy assessments under ORS 576.325.

(3) Borrow money in amounts that do not exceed estimated revenues from assessments for the year.

(4) Enter into contracts for carrying out the duties of the commission.

(5) Subject to ORS 30.260 to 30.300, sue and be sued in the name of the commission.

(6) Request that the Attorney General prosecute in the name of the State of Oregon suits and actions for the collection of assessments levied by the commission.

(7) Study state and federal legislation with regard to tariffs, duties, reciprocal trade agreements, import quotas and other matters

affecting commodity industries and the state. A commission may represent and protect the interests of a commodity industry regarding any legislation, proposed legislation or executive action affecting the commodity industry.

(8) Participate in federal and state hearings or other proceedings concerning regulation of the manufacture, distribution, sale or use of pesticides as defined in ORS 634.006 or other chemicals that are of use or potential use to producers of a commodity. This subsection does not authorize a commodity commission to regulate the use of pesticides.

(9) To the extent consistent with the duties of the commission, participate in and cooperate with local, state, national and international private organizations or governmental agencies that engage in work similar to that of a commodity commission.

(10) Provide mechanisms for maintaining and expanding existing markets and developing new domestic and foreign markets for a commodity, including but not limited to:

(a) Public relations programs;

(b) Media relations programs;

(c) Paid print, electronic and position advertising;

(d) Point of sale promotion and merchandising;

(e) Paid sales promotions and coupon programs; and

(f) Activities that prevent, modify or eliminate trade barriers that obstruct the free flow of a commodity to market.

(11) Conduct and fund research to:

(a) Enhance the commercial value of a commodity and products derived from the commodity;

(b) Discover the benefits to public health, the environment or the economy of consuming or otherwise using a commodity;

(c) Develop better and more efficient production, harvesting, irrigation, processing, transportation, handling, marketing and uses of a commodity;

(d) Control or eradicate hazards to a commodity, including but not limited to hazards from animals, pests and plants;

(e) Develop viable alternatives for the rotation of crops;

(f) Determine new or potential demand for a commodity and develop appropriate market development strategies for capturing that demand; and

(g) Measure the effectiveness of marketing, advertising or promotional programs.

(12) Gather, publicize and disseminate information that shows the importance of the consumption or other use of a commodity to public health, the environment, the economy and the proper nutrition of children and adults.

(13) Further the purposes of this section by funding scholarships for or providing financial assistance to persons or entities interested in a commodity.

(14) Adopt rules in accordance with ORS chapter 183 for carrying out the duties, functions and powers of the commission. [2003 c.604 §8 (enacted in lieu of 576.305)]

576.305 [1953 c.489 §20; 1957 c.447 §13; 1959 c.596 §12; repealed by 2003 c.604 §7 (576.304 enacted in lieu of 576.305)]

576.306 Independent contractors performing services for commission; rentals and acquisitions; rules. (1) A commodity commission may contract with an independent contractor for the performance of any services. However, the commission may not contract with an independent contractor to perform the discretionary functions of the commission. ORS 279.835 to 279.855 and ORS chapters 240, 279A, 279B and 279C do not apply to the commission in obtaining such services, except that no contract for such services shall take effect until approved by the State Department of Agriculture as provided in subsection (7) of this section.

(2) The commission may rent space or acquire supplies and equipment from any contractor as described in subsection (1) of this section. ORS chapters 276, 278, 279A, 279B, 279C and 283 and ORS 279.835 to 279.855 and 291.038 do not apply to such rentals or acquisitions.

(3) Except as provided in this section, a contractor described in subsection (1) of this section shall be considered an independent contractor and not an employee, eligible employee, public employee or employee of the state for purposes of Oregon law, including ORS chapters 236, 238, 238A, 240, 243, 291, 292, 316 and 652.

(4) Nothing in this section precludes the state or a commission from being considered the employer of the contractor described in subsection (1) of this section for purposes of unemployment compensation under ORS chapter 657 and ORS 670.600.

(5) A contractor described in subsection (1) of this section shall be considered an independent contractor and not a worker for purposes of ORS chapter 656 and ORS 670.600.

(6) A contractor described in subsection (1) of this section may not be considered a public official, public officer, state officer or executive official for purposes of Oregon law, including ORS chapters 236, 244, 292, 295 and 297 and ORS 171.725 to 171.785.

(7) The State Department of Agriculture shall review the contract described in subsection (1) of this section for the adequacy of the clauses pertaining to statement of work, starting and ending dates, consideration, subcontracts, funds authorized in the budget, amendments, termination, compliance with applicable law, assignment and waiver, access to records, indemnity, ownership of work product, nondiscrimination, successors in interest, attorney fees, tax certification or merger or any other clause the department deems necessary.

(8) The Oregon Department of Administrative Services, in consultation with the State Department of Agriculture, shall adopt rules necessary for the screening and selection of independent contractors under this section.

(9) Except as provided in subsection (8) of this section, the State Department of Agriculture may promulgate any rules necessary for the administration and enforcement of this section. [1991 c.948 §2; 1997 c.802 §21; 2003 c.733 §79; 2003 c.794 §302; 2005 c.22 §§394,395]

576.307 Provision of state services to commission. (1) Upon request by a commodity commission, the Oregon Department of Administrative Services may:

(a) Purchase or otherwise provide for acquiring or furnishing supplies, materials, equipment and services, other than personal services, that the commission requires and for independent contractors to furnish professional services to the commission.

(b) Provide for printing and multiple duplication work for the commission under ORS 282.010 to 282.050, except for printing and binding that advertises or promotes agricultural or manufactured products.

(c) Provide for services to the commission for disposing of surplus, obsolete or unused supplies, materials and equipment under ORS 279A.280.

(d) Provide for central telephone service and central mail or messenger services to the commission under ORS 283.140.

(e) Provide motor vehicles for use by members, officers and employees of the commission under ORS 283.305 to 283.350.

(2) A commission shall pay to the Oregon Department of Administrative Services an amount for services the department performs under subsection (1) of this section that the department determines is adequate to reimburse the department for the costs necessary to perform the services.

(3) At the commission's request, the Oregon Department of Administrative Services may design and supervise the installation of an accounting system for the commission. The commission shall pay to the Oregon Department of Administrative Services an amount for services the department performs under this subsection that the department determines is adequate to reimburse the department for the costs necessary to perform the services. [1959 c.596 §32; 1967 c.419 §35; 1993 c.500 §48; 2003 c.794 §303; 2005 c.22 §§396,397; 2009 c.601 §5]

576.309 Commission furnishing services, facilities and materials to other state agencies. A commodity commission may elect to furnish services, facilities and materials to other commodity commissions, the Oregon Wheat Commission, the Oregon Beef Council or other state agencies and officers under ORS 283.110 to carry out the purposes of ORS 576.051 to 576.455. Upon requisition by the commission, any other commodity commission, the Oregon Wheat Commission, the Oregon Beef Council or any other state agency or officer may furnish services, facilities and materials to the commission under ORS 283.110. [1959 c.596 §33; 2003 c.604 §36]

576.311 Commission exempt from certain financial administration laws. Except as otherwise provided in ORS 576.051 to 576.455, ORS 291.026, 291.201 to 291.222, 291.232 to 291.260, 291.322 to 291.336, 292.210 to 292.250, 293.260 to 293.280, 293.295 to 293.346 and 293.590 to 293.640 do not apply to a commodity commission or to the administration and enforcement of ORS 576.051 to 576.455. [1959 c.596 §34; 2005 c.22 §398]

576.315 Grants, donations and gifts. A commodity commission may accept grants, donations or gifts, from any source for expenditures for any purposes consistent with the powers conferred on the commission. [1953 c.489 §29; 2005 c.22 §399]

576.317 Intellectual property; rules. (1) As used in this section, "intellectual property" means patents, copyrights, trademarks, inventions, discoveries, processes, ideas and other similar property, whether or not they are patentable or copyrightable.

(2) A commodity commission established under ORS 576.051 to 576.455 may, consistent with the purposes of the commission, develop intellectual property that relates to a commodity or assists in the implementation, maintenance or development of commission programs. A commodity commission may take all necessary and proper actions relating to the development of an intellectual property, including but not limited to entering into contracts and other agreements and owning, managing, disposing of or using the intellectual property. A commodity commission developing intellectual property shall adopt rules to govern the ownership, management, disposal and use of intellectual

property and other activities of the commission relating to intellectual property.

(3) Moneys received by a commodity commission as a result of the commission's ownership, management, disposal or use of intellectual property, or other activities of the commission relating to intellectual property, must be deposited to an account established and maintained by the commission pursuant to ORS 576.375. Moneys deposited under this section are continuously appropriated to the commodity commission possessing the account for the purpose of carrying out the duties, functions and powers of the commission. [2001 c.578 §1; 2003 c.604 §37]

Note: 576.317 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 576 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

576.320 Commission employees not subject to state personnel compensation plans; commission not subject to office space regulation; fees for administrative services; rules. (1) Wages or salaries of employees of a commodity commission established under ORS 576.051 to 576.455 are not subject to personnel compensation plans for state employees established by the Oregon Department of Administrative Services under ORS 240.235 to 240.250.

(2) A commodity commission established under ORS 576.051 to 576.455 is not required to utilize office space furnished or obtained by the Oregon Department of Administrative Services as provided in ORS chapter 276.

(3) The State Department of Agriculture may charge and collect from each commodity commission established under ORS 576.051 to 576.455 an assessment or fee to reimburse the department for supervisory or administrative functions the department is required by law to perform with regard to commodity commissions. The department shall establish the amount of the assessment or fee by rule. [1993 c.561 §2; 2003 c.604 §38]

Note: 576.320 was added to and made a part of ORS chapter 576 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

(Assessment and Budgeting)

576.325 Levy and collection of assessments; commission rules regulating sale activities; maximum assessment rates. (1) As used in this section, "industry average unit price" means the average unit price for the raw commodity within the industry. Unless provided otherwise, "industry average unit price" includes prices that are calculated using a one-year, two-year or three-year average and data from the most recent complete year or years preceding the year of determination.

(2)(a) A commodity commission may assess, levy and collect an assessment, the amount of which the commission shall determine, on all units or animals of the commodity grown or produced in this state, or procured from this state's rivers or the offshore waters, but not the Columbia River, for handling within this state, and sold in commercial channels. A commission may not apply an assessment to a transaction that occurred prior to the effective date of the commission rule adopting the assessment.

(b) A commission may assess, levy and collect a differential assessment, the amount of which the commission shall determine, based on the intended use, type or variety of the commodity.

(c) All casual sales of the commodity made by the producer direct to the consumer are exempt from the assessment.

(d) A commission may, by rule, define and regulate handling, processing and casual sales.

(3) The amount of the assessment provided for in subsection (2) of this section is limited as follows:

(a) If a commission assesses on a unit basis, the assessment may not exceed one and one-half percent of the industry average unit price. The commission may determine the industry average unit price by considering data and estimates of the United States Department of Agriculture, Oregon State University or other reliable sources.

(b) If a commission assesses on a percentage of dollar value basis, the assessment may not exceed one and one-half percent of the dollar value received by a producer for the raw commodity. If the dollar value received by a producer is not otherwise determinable, the commission may establish the dollar value based on the industry average unit price for that year for the raw commodity.

(4) Notwithstanding subsection (3) of this section:

(a) The maximum assessment by the Oregon Clover Seed Commission may not exceed one and one-half percent of the industry average unit price for products within the same market category, if assessed on a unit basis.

(b) The maximum assessments by the Oregon Albacore Commission, the Oregon Orchardgrass Seed Producers Commission and the Oregon Tall Fescue Commission may not exceed three percent of the industry average unit price if assessed on a unit basis or three percent of the value received by a producer for the raw commodity if assessed on a percentage of dollar value basis.

(c) The maximum assessment by the Oregon Sweet Cherry Commission for fresh, brined, canned and frozen cherries may not exceed four percent of the respective industry average unit prices for fresh, brined, canned and frozen cherries if assessed on a unit basis.

(d) The maximum assessment by the Oregon Processed Vegetable Commission on a commodity may not exceed 0.5 percent of the industry average unit price for that commodity if assessed on a unit basis or 0.5 percent of the dollar value received by a producer for the commodity if assessed on a percentage of dollar value basis.

(e) The maximum assessment by the Oregon Hop Commission may not exceed two percent of the industry average unit price if assessed on a unit basis.

(f) The maximum assessment by the Oregon Sheep Commission may not exceed five cents per pound on all wool, in the grease basis, sold through commercial channels. The commission may not adopt an assessment that is more than one-half cent per pound of wool, in the grease basis, above the assessment for the previous year.

(5) A commission shall assess and levy an assessment under subsections (2) to (4) of this section to the producer at the time and in the manner provided by the commission by rule. The commission is the owner of a collected assessment. A person who collects an assessment holds the assessment in trust for the benefit of the commission and the state and shall remit the assessment in the time and manner required by the commission under ORS 576.335.

(6) Notwithstanding subsection (5) of this section, a commission may assess, levy and collect an assessment from a first purchaser at the time and in the manner provided by the commission by rule. Except as provided in subsection (8) of this section, the assessment may not exceed the limits described in subsections (3) and (4) of this section.

(7) A regional commission may assess, levy and collect an assessment only on the commodity produced in the counties in which the regional commission functions.

(8) Notwithstanding subsections (3) and (4) of this section, a commodity commission may assess, levy and collect an assessment in excess of the limits described in subsections (3) and (4) of this section pursuant to a federal marketing order or agreement.

(9) A person who believes that the amount of an assessment is incorrect may apply to the commission for a refund not later than 60 days after the person pays the assessment. [1953 c.489 §21; 1957 c.447 §14; 1959 c.596 §13; 1983 c.645 §1; 2001 c.504 §4; 2003 c.604 §39; 2007 c.132 §4]

576.327 Exemptions from assessment; rules. (1) A commodity commission may, by rule, establish exemptions from assessment based on:

(a) Commodity quantities;

(b) Types of commodity sale; and

(c) Types of commodity producer.

(2) When adopting a rule for exemptions under subsection (1) of this section, a commission must consider:

(a) Laws and rules of the United States and other states relating to commodity commissions, boards and marketing orders;

(b) The practices, procedures and customs unique to the production, handling, processing and trading of a particular commodity and to the producers and growers of that commodity; and

(c) The cost of collecting the particular assessment and practical problems relating to collection.

(3) A producer or handler that is exempted from assessment, but required to submit reports to a commission, is subject to ORS 576.351. [2003 c.604 §9]

576.335 Report by person responsible for collecting assessment. (1) A person responsible for collecting an assessment for a commodity commission shall make a report to the commission at the time and in the manner required by the commission.

(2) A person responsible for collecting an assessment for a commission who fails to deduct an assessment at the time of sale shall report and pay the assessment to the commission. A producer required to report and pay an assessment is subject to this section. [1953 c.489 §§24,26; 1959 c.596 §14; subsection (4) enacted as 1965 c.211 §3; 2003 c.604 §40]

576.345 Producer to make reports of and pay assessment moneys on certain sales. (1) When a first purchaser lives or has an office in another state or is a federal or other governmental agency, the producer shall report all sales made to the purchaser on forms provided by the appropriate commodity commission and pay the assessment moneys directly to the commission, unless the first purchaser voluntarily makes the proper deduction and remits the proceeds to the commission.

(2) If a producer performs the handling or processing functions on all or a part of the production of the commodity that normally would be performed by another person as first purchaser, the producer shall report sales of the commodity from the production of the producer on forms provided by the appropriate commodity commission and

pay the assessment moneys directly to the commission, unless the first purchaser voluntarily makes the proper deduction and remits the proceeds to the commission. [1953 c.489 §25; 1959 c.596 §15; subsection (2) enacted as 1959 c.596 §74; 2005 c.22 §400]

576.350 [1957 c.447 §18; repealed by 1959 c.596 §90]

576.351 Records of person required to pay or collect assessment; inspections and audits. (1) Each person required to pay or collect an assessment on a commodity under ORS 576.051 to 576.455 shall keep accurate records sufficient to enable a commodity commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission.

(2) For purposes of determining the accuracy of assessments paid or due to a commission, the commission or a person authorized by the commission may:

(a) Make an inspection during normal business hours of the business premises of a person required to pay or collect an assessment; and

(b) Audit the records of a person required to pay or collect an assessment.

(3) For purposes of determining the accuracy of assessments paid or due to a commission, the commission may issue a subpoena for the production of any books, records or documents related to the payment or collection of an assessment to a person required to pay or collect the assessment.

(4) If an audit determines that a person is delinquent in the payment or collection of an assessment, the person shall pay the cost of the audit, not to exceed an amount equal to the delinquent assessment. [1959 c.596 §76; 2003 c.604 §41]

576.355 Penalty for delaying transmittal of funds. (1) In addition to the penalties prescribed in ORS 576.991, any person who delays transmittal of funds beyond the time set by a commodity commission shall pay a penalty of 10 percent of the amount due and shall also pay one and one-half percent interest per month on the unpaid balance of the assessment.

(2) A commission may waive the penalty and interest described in subsection (1) of this section upon a showing of good cause.

(3) Notwithstanding subsection (1) of this section, if an assessment is collected pursuant to a federal marketing order or agreement, a commission may establish a penalty or interest rate that is consistent with that order or agreement. [1953 c.489 §28; 2003 c.604 §42]

576.365 Penalty for failure to relinquish assessment moneys to commission; civil action or other remedies. (1) If any person responsible for the transmittal of assessment moneys to a commodity commission fails to relinquish assessment moneys collected, the person shall pay a penalty equal to twice the amount of the unrelinquished assessment moneys.

(2) A commission may commence a civil action or utilize any other available legal or equitable remedy to collect an assessment or civil penalty, obtain injunctive relief or obtain specific performance under ORS 576.051 to 576.455.

(3) If the person responsible for the transmittal of assessment moneys is a corporation, all directors and officers of the corporation are personally liable for a failure to relinquish the assessment moneys collected by the corporation.

(4) If a commission obtains a favorable judgment in an action or suit under subsection (2) of this section, the court shall award the commission costs and reasonable attorney fees.

(5) Unless the person required to pay an assessment and the person responsible for collecting the assessment are related businesses, the department may not collect from the person required to pay the assessment any amount deducted by the person responsible for collecting the assessment and due and owing to the department. [1953 c.489 §27; 1959 c.596 §16; 2003 c.604 §43]

576.370 Disputes over assessment amounts; rules governing disputes and establishing assessment periods. (1) A commodity producer may dispute the amount of a commodity assessment levied against the producer on a unit basis under ORS 576.325 if the total assessment levied against the producer during an assessment period established by commodity commission rule exceeds the total dollar value received by the producer for the raw commodity during that assessment period multiplied by the maximum lawful assessment percentage.

(2) A commodity producer who disputes the amount of a commodity assessment as provided under subsection (1) of this section must file any challenge to the assessment with the appropriate commodity commission no later than 60 days after the close of the assessment period. The challenge must be on a form provided by the State Department of Agriculture. A commodity commission shall process a challenge under this section as provided by rules adopted under subsection (4) of this section.

(3) A commodity producer filing a challenge under this section bears the burden of proving the total dollar value received by the producer during the assessment period. If the producer acts as a handler or processor for

all or part of the producer's commodity production, the producer also bears the burden of proving that the prices paid to the producer are equivalent to prices paid in arm's-length transactions. A commodity commission shall refund the amount of the assessment that the producer proves is in excess of the total dollar value received by the producer for the raw commodity during the assessment period multiplied by the maximum lawful assessment percentage.

(4) The department shall adopt necessary and proper uniform rules for commodity commissions to carry out this section. The department rules shall include, but need not be limited to, procedures for the filing, processing and formal or informal resolution of challenges and for determining commodity prices paid in arm's-length transactions. A commodity commission shall adopt rules establishing assessment periods and may adopt supplemental rules that do not conflict with the rules of the department. [2001 c.504 §2; 2003 c.604 §44; 2005 c.22 §401]

Note: 576.370 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 576 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

576.372 Authority of Oregon Alfalfa Seed Commission to adopt rules authorizing refunds; effect. (1) In addition to any refund permitted under ORS 576.325, the Oregon Alfalfa Seed Commission may adopt rules that provide for the commission to refund all or part of a commodity assessment levied by the commission upon request of the person paying the assessment. A rule adopted under this subsection may not provide for the commission to refund an amount less than the portion of the assessment used by the commission for advertising and product promotion.

(2) If the commission adopts rules pursuant to subsection (1) of this section:

(a) Plans and projects recommended by the commission are exempt from State Department of Agriculture review and approval or disapproval under ORS 576.066 (2); and

(b) Notwithstanding ORS 576.206, the commission may vote to eliminate the position for a commissioner who is a member of the public. [2003 c.604 §22; 2003 c.604 §23; 2007 c.55 §3; 2011 c.181 §5]

576.375 Payment of commission moneys to authorized agent; deposits and withdrawals; investments. (1) All moneys collected or received by any person from the assessment levied under the authority of ORS 576.325 and all other moneys received by a commodity commission must be paid to the authorized agent of the commission and promptly deposited into an account established by the commission in a depository, as defined in ORS 295.001, that is insured by the Federal Deposit Insurance Corporation. In a manner consistent with the requirements of ORS 295.001 to 295.108, the chairperson and vice chairperson for a commission shall ensure that sufficient collateral secures any amount of funds on deposit that exceeds the limits of the Federal Deposit Insurance Corporation's coverage. All moneys in the account are continuously appropriated to the commission making the deposit for the purpose of carrying out the duties, functions and powers of the commission.

(2) Moneys may not be withdrawn from or paid out of the account except upon order of the commission, and upon checks or other orders upon such accounts signed by the secretary-treasurer or such other member of the commission as the commission designates and countersigned by such other member, officer or employee of the commission as the commission designates. The commission shall keep a receipt, voucher or other written record, showing clearly the nature and items covered by each check or other order.

(3) Subject to approval by the Director of Agriculture, a commission may invest moneys collected or received by the commission. Investments made by a commission are:

(a) Limited to investments described in ORS 294.035;

(b) Subject to the investments maturity date limitations described in ORS 294.135; and

(c) Subject to the conduct prohibitions listed in ORS 294.145.

(4) Interest earned from any moneys invested by a commission under subsection (3) of this section is available to the commission in a manner consistent with the commission's annual budget. [1953 c.489 §22; 1959 c.596 §17; 1967 c.451 §25; 2003 c.604 §45; 2007 c.871 §29]

Note: The amendments to 576.375 by section 27, chapter 101, Oregon Laws 2010, become operative January 1, 2013, and apply to public funds on deposit on or after January 1, 2013. See section 29, chapter 101, Oregon Laws 2010, as amended by section 2, chapter 667, Oregon Laws 2011, and see section 30, chapter 101, Oregon Laws 2010. The text that is operative on and after January 1, 2013, is set forth for the user's convenience.

576.375. (1) Moneys a person collects or receives from the assessment levied under the authority of ORS 576.325 and other moneys a commodity commission receives must be paid to the authorized agent of the commission and promptly deposited into an account established by the commission in a depository, as defined in ORS 295.001, that is insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. In a manner consistent with the requirements of ORS 295.001 to 295.108, the chairperson and vice chairperson for a commission shall ensure that sufficient collateral secures any amount of funds on deposit that exceeds the limits of the Federal Deposit Insurance Corporation's or the National Credit Union

Share Insurance Fund's coverage. All moneys in the account are continuously appropriated to the commission that makes the deposit for the purpose of carrying out the commission's duties, functions and powers.

(2) Moneys may not be withdrawn from or paid out of the account except upon order of the commission, and upon checks or other orders upon such accounts signed by the secretary-treasurer or such other member of the commission as the commission designates and countersigned by such other member, officer or employee of the commission as the commission designates. The commission shall keep a receipt, voucher or other written record, showing clearly the nature and items covered by each check or other order.

(3) Subject to approval by the Director of Agriculture, a commission may invest moneys the commission collects or receives. Investments a commission makes are:

(a) Limited to investments described in ORS 294.035;

(b) Subject to the investments maturity date limitations described in ORS 294.135; and

(c) Subject to the conduct prohibitions listed in ORS 294.145.

(4) Interest earned from any moneys a commission invests under subsection (3) of this section is available to the commission in a manner consistent with the commission's annual budget.

576.380 [1957 c.447 §16; repealed by 1959 c.596 §90]

576.385 Bond or letter of credit required of person authorized to receive or disburse commission moneys. Any person authorized by a commodity commission to receive or disburse moneys as provided in ORS 576.375 shall file with the commission a fidelity bond executed by a surety 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. The bond or letter of credit must be in favor of the commission and the State of Oregon, in an amount equal to the maximum amount of moneys the commission determines the person will have subject to control at any one time and upon such conditions as the commission shall prescribe. The commission shall pay the cost of the bond or letter of credit. [1953 c.489 §23; 1957 c.447 §20; 1959 c.596 §19; 1991 c.331 §86; 1997 c.631 §499; 2005 c.22 §402]

576.390 [1957 c.447 §15; repealed by 1959 c.596 §90]

576.391 [1959 c.596 §73; repealed by 2003 c.604 §10 (576.392 enacted in lieu of 576.391)]

576.392 Cancellation of uncollectible assessment; subsequent collection. A commodity commission may cancel an uncollectible assessment consistent with ORS 293.240. Subsequent collection of debt written off under ORS 293.240 is governed by ORS 293.245. [2003 c.604 §11 (enacted in lieu of 576.391)]

576.395 Books, records and accounts of commission. Each commodity commission shall keep accurate books, records and accounts of all its dealings, which shall be open to inspection and audit by the Secretary of State. [1953 c.489 §30; subsection (2) enacted as 1959 c.596 §75; 1973 c.794 §30; 2005 c.22 §403]

576.405 [1953 c.489 §36; repealed by 2003 c.604 §109]

576.410 "Fiscal year" defined. As used in ORS 576.416 to 576.445, "fiscal year" means the fiscal year commencing on July 1 and ending on June 30. [1959 c.596 §21]

576.415 [1959 c.596 §§22, 23; 1977 c.198 §12; 1993 c.98 §18; repealed by 2003 c.604 §13 (576.416 enacted in lieu of 576.415)]

576.416 Preparation of commission budget; annual financial statement. (1) A commodity commission shall adopt a budget on an annual basis using classifications of expenditures and revenues required by ORS 291.206. The budget is not subject to review by the Legislative Assembly or to future modification by the Emergency Board or the Legislative Assembly.

(2) A commission shall follow generally accepted accounting principles and keep financial and statistical information as necessary to completely and accurately disclose the financial operations of the commission as may be required by the Secretary of State. In addition, the budget must show the estimated receipts and expenditures by or under the authority of the commission under ORS 576.051 to 576.455 for the fiscal year for which the budget is adopted. The budget also must show the actual receipts and expenditures by or under the authority of the commission for the fiscal year preceding the fiscal year in which the proposed budget is prepared, if any, and the estimated receipts and expenditures by or under the authority of the commission for the fiscal year in which the budget is prepared, if any.

(3) Estimated receipts and expenditures for the fiscal year for which the budget is adopted must be fully itemized and be prepared and arranged to clearly show each item of receipts and expenditures. To the extent practicable, the items of receipts and expenditures must be arranged under major groups or categories that are the same as the most recent classifications of revenue and expenditures established pursuant to ORS 291.206.

(4) The budget shall contain only one estimate for emergency or other expenditures that are unforeseen at the time the budget is prepared.

(5) A commission shall call and hold at least one public meeting upon the proposed budget. In selecting a time and place for a meeting, a commission shall be guided by consideration for the convenience of the majority of the producers of the commodity. At a meeting, any person has a right to be heard with respect to the proposed budget.

(6) At least 14 days prior to the date of a meeting under subsection (5) of this section, a commission shall publish notice at

least once in a newspaper of general circulation in this state. The notice must set forth the purpose, time and place of the meeting and state that a copy of the proposed budget is available for public inspection at the place of business of the commission or at another convenient location.

(7) After a budget has been adopted, a commission shall submit to the Director of Agriculture a copy of the budget and an affidavit setting forth the pertinent facts relating to the preparation and adoption of the budget. The director shall examine the budget and the affidavit within 15 days and, if the director determines that the estimated receipts and expenditures in the budget are in conformity with the authority of the commission and other applicable statutory requirements and that the facts set forth in the affidavit indicate that the budget was prepared and adopted in accordance with the law, the director shall certify those determinations on the copy of the budget and make the budget final. If the director determines that the budget fails to meet the requirements in any respect, the director shall immediately notify the commission of the particular failures. The commission shall promptly take all practicable measures to remedy the failures and shall resubmit a copy of the budget to the director for examination. The director shall retain the certified copy of the final budget and make the budget available for public inspection during normal business hours of the State Department of Agriculture.

(8) A commission shall prepare an annual financial statement of commission revenues and expenses and shall make the statement available for public review. A commission shall provide a copy of the statement to the Secretary of State and the department no later than 90 days after the end of the state fiscal year. [2003 c.604 §14 (enacted in lieu of 576.415)]

576.420 Expenditures prohibited unless budget procedure complied with. An expenditure of moneys for a fiscal year may not be made or incurred by or under the authority of a commodity commission under ORS 576.051 to 576.455 unless the commission complies with ORS 576.416. [1959 c.596 §24; 2003 c.604 §46]

576.425 [1959 c.596 §25; repealed by 2003 c.604 §109]

576.430 [1959 c.596 §26; 1977 c.198 §13; 1993 c.98 §19; repealed by 2003 c.604 §109]

576.435 [1959 c.596 §27; 2003 c.734 §17; repealed by 2003 c.604 §109]

576.440 Limitation on expenditures. (1) Except as otherwise provided in subsection (2) of this section, an expenditure of moneys for a fiscal year may not be made or incurred by or under the authority of a commodity commission under ORS 576.051 to 576.455:

(a) In excess of the total amount of expenditures estimated for the fiscal year in the budget adopted for the fiscal year or in excess of the total amount of expenditures estimated for the major group or category of the expenditure for the fiscal year in the budget adopted for the fiscal year.

(b) For any purpose different than that indicated by the major group or category of the expenditure in the budget adopted for the fiscal year.

(2) An expenditure of moneys for a fiscal year unforeseen at the time the budget is prepared may not be made or incurred by or under the authority of the commission under ORS 576.051 to 576.455 in excess of the amount of unforeseen expenditures estimated as provided in ORS 576.416. [1959 c.596 §28; 2003 c.604 §47]

576.445 Unforeseen expenditures. (1) Subject to ORS 576.440 (2), expenditures of moneys for a fiscal year unforeseen at the time the budget of a commodity commission is prepared may be made or incurred by order of the commission. The order must indicate the amount and purpose of the expenditure and why the expenditure was unforeseen. At least one copy of the order must be filed in the office of the commission and available for public inspection during normal business hours of the commission.

(2) The commission shall send a copy of the order to the Director of Agriculture. The director shall examine the order and the budget to which the order relates. The director shall certify the order if the director determines that the form of the order is in accordance with law, that the facts set forth in the order and the budget to which the order relates indicate that the order is in accordance with law, and that the proposed unforeseen expenditure is appropriate to accomplish the goals and needs of the commission. The director shall immediately notify the commission if the director determines that the order is defective because of a failure to comply with ORS 576.416, because the final budget or the preparation or adoption of the final budget is defective or because estimated expenditures are not in conformity with statutory requirements. The commission shall promptly take all practicable steps to remedy the defects. The director shall retain the certified copy of the order and make the copy available for public inspection during normal business hours of the State Department of Agriculture. [1959 c.596 §29; 1977 c.198 §14; 1993 c.98 §20; 2003 c.604 §48]

576.450 [1959 c.596 §30; repealed by 2003 c.604 §109]

576.455 Moneys of abolished commission. (1) Unless the Legislative Assembly orders a refund pursuant to subsection (2) of this section, if the Legislative Assembly abolishes a commodity commission, any moneys remaining in the possession of the abolished commission on the effective date of the abolishment are transferred to Oregon State University and are continuously appropriated to the university for research benefiting producers of the commodity that was subject to assessment by the abolished commission.

(2) The Legislative Assembly may order in an Act dissolving a commodity commission that any moneys remaining in the possession of the abolished commission on the effective date of the abolishment be refunded on a proportional basis to the persons who paid assessments to the commodity commission during the assessment year in which the commodity commission was abolished. [2003 c.604 §12]

576.505 [1953 c.489 §31; 1957 c.447 §21; 1959 c.596 §77; repealed by 2003 c.604 §109]

576.515 [1953 c.489 §32; repealed by 1959 c.596 §90]

576.525 [1953 c.489 §33; repealed by 2003 c.604 §109]

576.555 [1959 c.596 §78; 1965 c.515 §7; 1977 c.198 §15; 2001 c.504 §5; repealed by 2003 c.604 §109]

576.565 [1959 c.596 §79; repealed by 2003 c.604 §109]

576.570 [1965 c.515 §6; 1977 c.198 §16; repealed by 2003 c.604 §109]

576.575 [1959 c.596 §80; repealed by 2003 c.604 §109]

576.578 [1971 c.486 §2; 1987 c.180 §1; 1993 c.281 §1; repealed by 2003 c.604 §109]

576.580 [1971 c.486 §3; 1987 c.180 §2; 1993 c.281 §2; repealed by 2003 c.604 §109]

576.582 [1971 c.486 §4; 1993 c.281 §3; repealed by 2003 c.604 §109]

576.584 [1971 c.486 §5; repealed by 2003 c.604 §109]

576.585 [1965 c.211 §2; repealed by 2003 c.604 §109]

576.595 Sales are in commercial channels. Any sale of a commodity by a grower or producer is a sale in commercial channels for the purposes of ORS 576.051 to 576.455 and 576.991 (2). [1965 c.211 §1; 2003 c.604 §49; 2011 c.597 §236]

MEDIATION OF MARKETING DISPUTES

576.610 Definitions for ORS 576.610 to 576.650. As used in ORS 576.610 to 576.650, unless the context requires otherwise:

(1) "Agricultural commodity" means any agricultural, horticultural or viticultural product, but does not include milk, timber or timber products.

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

(3) "Director" means the Director of Agriculture.

(4) "Handler" means any person who purchases an agricultural commodity and thereafter grades, packs, cans, freezes, distills, crushes or otherwise preserves or changes the form of the commodity for the purpose of marketing the commodity.

(5) "Producer" means a person engaged in the business of growing, raising or otherwise producing an agricultural commodity for sale or an association of such persons organized under ORS chapter 62.

(6) "Representative group of producers" means those producers who produced, in the previous crop season, more than 59 percent of the amount of the commodity handled by each separate handler with whom such producers are involved in a dispute. [1969 c.238 §1]

576.620 Department to perform mediation services; employees; qualifications. In addition to such other duties as may be prescribed by law, the State Department of Agriculture shall perform mediation services for producers and handlers involved in agricultural marketing disputes in the manner provided in ORS 576.610 to 576.650. Subject to any applicable provision of the State Personnel Relations Law, the Director of Agriculture may appoint such employees as the director considers necessary to perform the mediation services required by ORS 576.610 to 576.650. In addition to or in place of any permanent employees appointed to perform mediation services, the director may appoint persons, on a temporary basis, to perform such services. Such temporary employees serve at the pleasure of the director, and need not be members of the classified service, as defined in ORS 240.210. The director may set the hours, salaries, expense allowances and other terms and conditions of employment of such temporary employees. Any person designated to act for the director in a mediation proceeding shall be a disinterested person who is not a producer or handler of the commodity involved in the dispute, or interested in the ownership or management of such a producer or handler. [1969 c.238 §2]

576.630 Request for mediation; meeting with parties. Whenever a representative group of producers of an agricultural commodity are unable to reach an agreement on price or other marketing term with a handler, either side may request in writing mediation assistance from the State Department of Agriculture in settling the dispute. Not later than 10 days after receiving such a request for assistance, the department shall meet with the parties to the dispute and shall assist the parties in attempting to reach a settlement. [1969 c.238 §3]

576.640 Rules. In accordance with ORS chapter 183, the State Department of Agriculture may promulgate rules to carry out ORS 576.610 to 576.650. [1969 c.238 §4]

576.650 Cooperation by state agencies. All governmental agencies and officers shall cooperate with the State Department of Agriculture and furnish such information and advice as the department considers necessary for the performance of its mediation services. [1969 c.238 §5]

PAYMENT FOR AGRICULTURAL COMMODITIES

(Generally)

576.700 Definitions for ORS 576.700 to 576.710. As used in ORS 576.700 to 576.710:

(1) "Commodity" has the meaning for that term provided in ORS 576.051.

(2) "Processor" means any person who purchases, offers to purchase or contracts to purchase in this state any commodity from a producer or an agent of a producer for the purpose of packaging, processing or marketing such commodity. "Processor" does not include any cooperative, formed pursuant to ORS chapter 62.

(3) "Producer" means any person other than a processor who produces a commodity in this state for commercial purposes.

(4) "Meat animal" has the meaning for that term provided in ORS 603.010. [1971 c.531 §1; 1975 c.703 §8]

576.705 Processors required to pay for commodities within 30 days after delivery; interest on late payments. Notwithstanding any other provision of law:

(1) In the absence of a contract providing otherwise, any processor who purchases a commodity from a producer shall make full payment therefor not later than the 30th day after the day the processor takes delivery of the harvested commodity.

(2) Any processor 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 percent per month. [1971 c.531 §2]

576.710 Applicability of ORS 576.705. ORS 576.705 does not apply to any processor:

(1) That purchases from a producer seed that requires cleaning and germination tests;

(2) That arranges for the production of agricultural seed under a contract that is subject to ORS 576.718 or 576.721;

(3) Of sugar beets whose contract with a producer for sale of the crop provides for profit sharing;

(4) Of fish or seafood products; or

(5) Of meat animals. [1971 c.531 §3; 1975 c.703 §9; 2011 c.356 §11]

(Seeds)

576.715 Definitions for ORS 576.715 to 576.744. As used in ORS 576.715 to 576.744:

(1) "Agricultural seed" means grass seed of a type commonly sold for use in turf lawns or as forage seed.

(2) "Authenticate" has the meaning given that term in ORS 79.0102.

(3) "Producer" means a person that grows agricultural seed in this state on a commercial basis for a seed dealer.

(4) "Seed bailment contract" means a seed production contract under which the seed dealer retains title to all seed, seed stock and plant life grown or used by the producer under the terms of the contract.

(5) "Seed dealer" means a person that in the ordinary course of business contracts to buy agricultural seed grown in this state by a producer or contracts with a producer for the growing of agricultural seed in this state.

(6) "Seed delivery" means the date on which the seed grower delivers grass seed to the seed dealer pursuant to a notice from the dealer.

(7) "Seed grower" means a person that grows grass seed in this state on a commercial basis without entering into a contract with a seed dealer prior to harvesting of the seed.

(8) "Seed production contract" means a written agreement between a producer and a seed dealer for the growing of agricultural seed in this state.

(9) "Seed purchase contract" means a written agreement for a seed dealer to purchase grass seed that has been grown by a seed grower. "Seed purchase contract" does not include a seed production contract.

(10) "Variety Not Stated Seed" means agricultural seed that is sold in unmarked plastic bags or other unmarked containers without any reference to a variety name for the seed. [2011 c.356 §1]

Note: Section 12, chapter 356, Oregon Laws 2011, provides:

Sec. 12. Sections 1 to 10 of this 2011 Act [576.715 to 576.744] and the amendments to ORS 576.710 by section 11 of this 2011 Act apply to seed production contracts, seed purchase contracts and other agreements for the production of agricultural seed or grass seed formed on or after August 1, 2011. [2011 c.356 §12]

Note: 576.715 to 576.747 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 576 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

576.718 Seed production contract terms. (1) The following terms apply to seed production contracts:

(a) If the contract does not settle the price of the agricultural seed, the contract is enforceable and the price shall be determined as described in ORS 72.3050 (1) to (3).

(b) Except as provided in ORS 576.721 (1) or (3), payment to the producer is due no later than the earliest of the following:

(A) The dates specified in the contract.

(B) Thirty days after delivery of the seed.

(C) May 1 of the calendar year following the harvesting of the seed.

(c) Unless expressly provided otherwise in a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed, the risk of loss and the responsibility for the payment of storage fees transfer from the producer to the seed dealer upon the earlier of:

(A) The delivery of the seed to the seed dealer pursuant to a notice from the seed dealer; or

(B) The delivery to the seed dealer of test results establishing that the seed meets quality standards set forth in the contract.

(d) Unless expressly provided otherwise in a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed, the minimum period for an initial contract is two years. This paragraph does not establish a minimum period for an extension or renewal that follows an initial contract period.

(2) It is an implied condition of any price or payment requirement described in subsection (1) of this section that the producer is performing, or has completed performance, in accordance with the seed production contract and has not otherwise breached the contract.

(3) Except as provided in subsection (5) of this section, a seed production contract described in this section may contain any additional terms agreed to by the parties.

(4) If a seed production contract is extended or renewed, for the extension or renewal period the parties may:

(a) Subject to paragraph (b) of this subsection, continue the terms of the original contract or agree to new or different contract terms; and

(b) Agree to payment due date terms as provided under this section or under ORS 576.721 (3).

(5) A seed production contract may not:

(a) Provide for exclusive venue or jurisdiction in another state;

(b) Provide for the terms of the contract to be interpreted under the laws of another state;

(c) Waive the application of ORS 576.715 to 576.744 to the contract; or

(d) Authorize a unilateral material modification of the contract.

(6) Subject to ORS 72.2010, subsections (1) and (5) of this section also apply to a nonwritten agreement for the production of agricultural seed.

(7) A term in a seed production contract that conflicts with subsection (1) or (5) of this section is void as a matter of public policy. [2011 c.356 §2]

Note: See notes under 576.715.

576.721 Payment due date provisions in contracts authenticated prior to planting. (1) A seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed may contain payment due date terms that differ from the payment due date terms described in ORS 576.718 (1)(b) if the contract:

(a) Provides for the price of the seed to be determined no later than March 15 of the calendar year following harvesting of the seed;

(b) Requires the seed dealer to make a partial payment no later than March 15 of the calendar year following harvesting of the seed that is at least 40 percent of the full payment amount; and

(c) States the date by which final payment for the seed is due.

(2) If a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed does not contain each provision, requirement and statement described in subsection (1)(a) to (c) of this section, notwithstanding any contrary payment due date terms stated in the contract, the payment due date terms of the contract are subject to ORS 576.718 (1)(b).

(3) An extension or renewal of any seed production contract, regardless of when the contract was authenticated, may contain payment due date terms that differ from the payment due date terms described in ORS 576.718 (1)(b) if the extension or renewal contains the provision, requirement and statement described in subsection (1)(a) to (c) of this section. If an extension or renewal of a seed production contract does not contain each provision, requirement and statement described in subsection (1)(a) to (c) of this section, notwithstanding any contrary pay-

ment due date terms stated in the extension or renewal, the payment due date terms for the extension or renewal are subject to ORS 576.718 (1)(b).

(4) It is an implied condition of any payment requirement created as provided under this section that the producer is performing, or has completed performance, in accordance with the seed production contract and has not otherwise breached the contract. [2011 c.356 §3]

Note: See notes under 576.715.

576.725 [2001 c.265 §1; repealed by 2011 c.356 §18]

576.726 Title; bailments; liens. (1) A seed bailment contract or seed purchase contract does not create a possessory security interest in goods under ORS chapter 79. For a seed bailment contract, filing, recording or notice of the contract is not a requirement for establishing, during the term of the contract, the validity of the contract or for establishing and confirming in the seed dealer the title to all seed, seed stock and plant life grown or used by the producer under the terms of the contract.

(2) Payments due from a seed dealer to a producer under the terms of a seed bailment contract, or due to a seed grower under the terms of a seed purchase contract, are subject to lien under ORS 87.226 and to security interests perfected as provided under ORS chapter 79. [2011 c.356 §4]

Note: See notes under 576.715.

576.727 [2001 c.265 §2; repealed by 2011 c.356 §18]

576.729 Seed purchase contract terms. (1) The terms of a seed purchase contract must include:

(a) The estimated date for seed delivery;

(b) The terms and estimated date for the seed dealer to pay the seed grower;

(c) The amount of grass seed to be purchased; and

(d) The species, cultivars and quality standards of the grass seed to be purchased.

(2) If the seed purchase contract does not settle the price of the grass seed, the contract is enforceable and price shall be determined as described in ORS 72.3050 (1) to (3). A seed purchase contract must require the seed dealer to make payment to the seed grower within 30 days after seed delivery. However, upon written mutual agreement of the seed grower and the seed dealer, the grower may extend the period available for the dealer to make payment. [2011 c.356 §5]

Note: See notes under 576.715.

576.732 Contract modification; damages for breach. (1) A party to a seed production contract or seed purchase contract may not, as a condition of performance, require the other party to agree to a material modification of the contract. A contract modification obtained in violation of this subsection is unenforceable.

(2) In any action to recover damages for breach of a seed production contract or seed purchase contract, if the court finds that a party to the contract failed to act in good faith as defined in ORS 71.2010, the court may award the prevailing party court costs and reasonable attorney fees. [2011 c.356 §6]

Note: See notes under 576.715.

576.735 Seed not meeting quality standards. (1) If testing as provided under a seed production contract establishes that agricultural seed does not meet the quality standards set forth in the contract, the producer may at any time send the test results to the seed dealer and inquire whether the seed dealer intends to purchase the seed. If, within 30 days after the seed dealer receives the test results and inquiry from the producer, the seed dealer delivers a response informing the producer that the seed dealer intends to purchase the seed, the response is an accord that forms a seed purchase contract for the seed purchased under this subsection. Except as provided in this subsection regarding price, the parties may establish the terms of the seed purchase contract as provided under ORS 576.729. The price of the seed that is subject to the seed purchase contract shall be:

(a) Any price stated in the seed production contract for seed not meeting quality standards;

(b) If not determined by the seed production contract, any price agreed to by the parties; or

(c) If not determined by the seed production contract or by agreement, the market price for seed of the same kind and quality as the produced seed. However, a seed price established by the use of market price may not exceed any price established in the seed production contract for seed that meets quality standards.

(2) An accord that creates a seed purchase contract under subsection (1) of this section does not affect the terms of a seed production contract for any seed that was not described in the test results and inquiry sent by the producer.

(3) A producer may send test results and make an inquiry under subsection (1) of this section in any manner that documents seed dealer receipt of the test results and inquiry. A seed dealer may send a response under subsection (1) of this section to a producer in any manner that documents producer receipt of the response.

(4) If, within 30 days after the seed dealer receives the test results and inquiry from the

producer, the seed dealer has not delivered a response informing the producer that the seed dealer intends to purchase the seed, the seed dealer is deemed to have refused purchase of the seed and to have authorized the producer to sell the seed in a commercially reasonable manner as "Variety Not Stated Seed." This subsection does not authorize the sale of any seed, seed stock or plant life of a protected variety grown or used by the producer other than a sale of seed as "Variety Not Stated Seed." The remedy provided under this subsection is in addition to any other remedy available to a producer by law. An authorization for sale arising under this subsection is in addition to any other conditional or unconditional authorization for sale that a seed dealer may grant to a producer. [2011 c.356 §7]

Note: See notes under 576.715.

576.738 Seed dealer failure to timely make payment; fee. (1) If a seed dealer fails to pay a producer for agricultural seed when payment is due under a seed production contract or fails to pay a seed grower for grass seed when payment is due under a seed purchase contract, the producer or seed grower may notify the State Department of Agriculture. Upon notification by a producer or seed grower, the department shall determine whether payment has been made when due. If the department determines that the seed dealer has not made a payment that is due under a seed production contract or seed purchase contract, the department shall notify the seed dealer in writing that the dealer has 30 days to pay the producer or seed grower all delinquent amounts plus interest on each delinquent amount at the rate of one percent per month simple interest from the final payment date for that delinquent amount.

(2) A seed production contract or seed purchase contract may not vary the terms of the remedy provided by this section. A seed dealer may appeal the notice given by the department under this section as provided in ORS chapter 183. This section does not prevent a producer or seed grower from filing a notice of lien against a seed dealer.

(3) If a seed dealer fails to make payment as required by a notice given by the department under this section, the department shall suspend any seed dealer license issued to the dealer until the dealer demonstrates to the satisfaction of the department that the dealer is current on all payments due to all producers and seed growers. An order suspending a license under this subsection is subject to ORS chapter 183. However, the department may not suspend a seed dealer license under this section using the procedure described in ORS 183.430 (2).

(4) A seed dealer that fails to make payment on a seed production contract or seed purchase contract as required by a notice given by the department under this section is considered to have authorized the producer or seed grower to sell in a commercially reasonable manner any seed from the contract that is still in the possession of the producer or seed grower. This subsection does not prevent a seed dealer from giving consent to the producer or seed grower by other means and does not supersede the terms of a consent given by other means.

(5) The department may charge a producer or seed grower a fee, not to exceed $50, for determining whether payment has been made in accordance with the terms of a seed production contract or seed purchase contract. The department may charge a producer or seed grower a fee, not to exceed $200, for notifying a seed dealer in writing regarding the deadline for payment of delinquent amounts plus interest. [2011 c.356 §8]

Note: See notes under 576.715.

576.741 Seed dealer financial assurance; rules; license refusal; agents. (1) As used in this section:

(a) "Officer" means any of the following individuals:

(A) A president, vice president, secretary, treasurer or director of a corporation.

(B) A general partner in a limited partnership.

(C) A manager in a manager-managed limited liability company.

(D) A member of a member-managed limited liability company.

(E) A trustee.

(F) An individual that is an officer as defined by the State Department of Agriculture by rule. A definition of "officer" adopted by department rule may include individuals not listed in this paragraph who may exercise substantial control over a business.

(b) "Owner" means:

(A) A sole proprietor of, partner in or holder of a controlling interest in an applicant; or

(B) Any person that is an owner as defined by the department by rule.

(2) The State Department of Agriculture may adopt rules to require, as a condition of issuing a seed dealer license under ORS 633.700, that each seed dealer provide the department financial assurance for the performance by the seed dealer under any seed production contract or seed purchase contract entered into by the seed dealer.

(3) The department may refuse to issue a seed dealer license to an applicant if the ap-

plicant, any owner or officer of the applicant or any individual exercising substantial control over the seed industry activities of the applicant:

(a) Is a seed dealer for which the license has been suspended under ORS 576.738;

(b) Is or was an owner or officer of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended under ORS 576.738; or

(c) Was an individual who exercised substantial control over the seed industry activities of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended under ORS 576.738.

(4) An agent that enters into a seed production contract on behalf of a seed dealer is conclusively presumed to have actual authority to establish the performance obligations of the seed dealer under the contract. [2011 c.356 §9]

Note: See notes under 576.715.

576.744 Rules; mediation services. (1) The Director of Agriculture may adopt rules for the administration and enforcement of ORS 576.715 to 576.744.

(2) The director may make mediation services available through the State Department of Agriculture for the resolution of seed production contract disputes and seed purchase contract disputes. [2011 c.356 §10]

Note: See notes under 576.715.

576.747 Reporting adoption of rules regarding dealer financial assurance. If the State Department of Agriculture adopts a rule described in ORS 576.741 (2), the department shall report to the next regular session of the Legislative Assembly following the rule adoption regarding the contents of the rule and the matters considered by the department in developing the rule. [2011 c.356 §13]

Note: See second note under 576.715.

OREGON WINE BOARD; WINE CELLAR

576.750 Definitions for ORS 576.750 to 576.775. As used in ORS 576.750 to 576.775, unless the context requires otherwise:

(1) "Grape product" means any juice, must, concentrate or extract made from vinifera grapes, true or hybrid, whether or not partially fermented. It does not include alcoholic liquor as defined in ORS 471.001.

(2) "Wine" has the meaning given that term in ORS 471.001.

(3) "Wine grape growing" means the cultivation in commercial quantities of vinifera grapes in this state.

(4) "Wine making" means the ownership and control of or the management of a licensed winery in this state. [1977 c.690 §1; 1983 c.651 §1; 1995 c.301 §32; 2003 c.797 §25; 2005 c.22 §404]

576.751 Legislative findings. The Legislative Assembly finds and declares that:

(1) The development of world-class wine grape growing and wine making industries is important to Oregon as a whole. The health of the wine grape growing and wine making industries affects the well-being of Oregonians and Oregon rural economies and environments.

(2) It is in the public interest to encourage the orderly growth and development of sustainable, labor-intensive, value-added agricultural industries, such as the wine grape growing and wine making industries.

(3) State involvement in the wine grape growing and wine making industries must be coordinated to respond to state interests and to encourage appropriate partnership and cooperation between the public and private sectors in ensuring orderly growth and realizing statewide objectives for world-class wine grape growing and wine making industries. [2003 c.797 §2]

576.753 Oregon Wine Board. (1) The Oregon Wine Board is established as a semi-independent state agency subject to ORS 182.456 to 182.472.

(2) The board shall consist of nine members appointed by the Governor. In making appointments, the Governor shall consider nominations or recommendations made by organizations with nominating committees representative of all major wine industry regions of the state.

(3) The term of office for a member is three years, but a member serves at the pleasure of the Governor. Before the expiration of a term, the Governor shall appoint a successor whose term begins on January 1 next following. A member is eligible for reappointment.

(4) If a vacancy occurs on the board, the Governor shall appoint a qualified person to serve the unexpired term.

(5) A person appointed to the board must have:

(a) Expertise and experience in the Oregon wine grape growing or wine making industries; and

(b) A demonstrated ability and disposition to serve the state's interests regarding all aspects of the Oregon wine grape growing and wine making industries, including but not limited to the various types and sizes of wine grape growing and wine making operations, grape varieties and growing regions within the state.

(6) A member of the board must maintain the following qualifications during the term of office:

(a) Be a bona fide resident of the state or an officer or principal owner of an entity organized or registered to do business in this state.

(b) Have a demonstrated interest in the positive development of the Oregon wine industry.

(c) Be actively engaged in wine grape growing or wine making.

(7) The members of the board shall elect a chairperson and vice-chairperson with duties and powers as determined by the board. [2003 c.797 §3]

576.755 [1977 c.690 §2; 1983 c.651 §2; 1987 c.804 §2; repealed by 2003 c.797 §28]

576.756 Board purpose and duties. The Oregon Wine Board shall operate for the purpose of supporting enological, viticultural and economic research to develop sustainable business practices for wine grape growing and wine making within Oregon and supporting the promotion of Oregon's wine grape growing and wine making industries. The board shall create and maintain a long term strategic plan and use that plan to guide the granting and funding decisions of the board. To the extent practicable, the board shall allocate funds and award grants in a manner that encourages coordinated, cost-effective projects that are integrated to implement the board's strategic statewide objectives for the development of world-class wine grape growing and wine making within Oregon. [2003 c.797 §7]

576.759 Board powers. To carry out the purposes specified in ORS 576.750 to 576.775, the Oregon Wine Board may:

(1) Appoint officers and enter into agreements with consultants, agents and advisers, and prescribe their duties;

(2) Appear on the board's own behalf before boards, commissions, departments or other agencies of municipal or county governments, the state government or the federal government;

(3) Procure insurance against any losses in connection with properties of the board in such amounts and from such insurers as may be necessary or desirable;

(4) Accept donations, grants, bequests and devises, conditional or otherwise, of money, property, services or other things of value, including the interest or earnings thereon but excluding corporate stock, that may be received from a government agency or a public or private institution or person, to be held, used or applied for any or all of the purposes specified in ORS 576.750 to 576.775 in accordance with the terms and conditions of the donation, grant, bequest or devise;

(5) Organize, conduct, sponsor, cooperate with and assist the private sector and other state agencies in the conduct of conferences and tours relating to the wine grape growing and wine making industries;

(6) Provide and pay for advisory services and technical assistance that the board finds necessary or desirable; and

(7) Exercise any other powers necessary for the operation and functioning of the board under ORS 576.750 to 576.775. [2003 c.797 §5; 2005 c.22 §405]

576.760 [1977 c.690 §3; 1983 c.651 §3; 1987 c.804 §4; repealed by 2003 c.797 §28]

576.763 State wine cellar; sources; uses. The Oregon Wine Board shall establish a state wine cellar by purchasing or receiving donations of wines made in this state from fruit or grapes grown in this state. Wines collected in the state wine cellar may be:

(1) Held as standards to compare against other wines to develop and improve Oregon viticultural and enological practices.

(2) Sold to state governmental agencies for service at official governmental entertainment functions.

(3) Sold to the Governor and to the administrative heads of state agencies on official government business to present as gifts when required by protocol or social custom.

(4) Displayed and offered for tasting in connection with promotional campaigns to encourage the purchase of Oregon wines. [1985 c.117 §2; 2003 c.797 §26]

576.765 [1977 c.690 §6; 1983 c.651 §5; 1987 c.804 §3; 1997 c.249 §185; repealed by 2003 c.797 §28]

576.766 Rules; board employees. (1) In accordance with applicable provisions of ORS chapter 183, the Oregon Wine Board may adopt rules necessary for the administration of ORS 576.750 to 576.775.

(2) Notwithstanding ORS 182.460 and 576.753 (1), employees of the Oregon Wine Board are not eligible for inclusion within the Public Employees Retirement System. [2003 c.797 §6; 2005 c.22 §406]

576.768 Strategic plan; budget; rules. (1) The report submitted by the Oregon Wine Board under ORS 182.472 must include a description of the long term strategic plan created by the board and a description of the progress made in implementing the statewide strategic objectives of the board during the most recent biennium.

(2) Notwithstanding ORS 182.462:

(a) The board shall prepare and submit annual plans and a budget recommended by

the board for promotion and for research during the next fiscal year.

(b) The board shall adopt rules specifying the procedures, criteria and timelines for the preparation and approval of the annual plans and budget for promotion and for research.

(c) The Director of the Oregon Business Development Department shall review the budget and plans submitted under this section. In reviewing the annual plans and budget, the director shall consider whether the information supplied by the board is factual and consistent with ORS 576.750 to 576.775 and the positive development of the Oregon wine grape growing and wine making industries. The director shall either approve the budget and plans prior to the commencement of the next fiscal year or disapprove and return the budget and plans to the board with conditions necessary for approval prior to the commencement of the next fiscal year. In reviewing the budget and plans, the director may consult with and receive coordinated support from:

(A) The State Department of Agriculture;

(B) The Oregon Tourism Commission;

(C) The Oregon University System;

(D) The Department of Community Colleges and Workforce Development; and

(E) The Oregon Liquor Control Commission. [2003 c.797 §11; 2005 c.22 §407; 2009 c.762 §88]

576.771 Payment of tax; delayed payment; records; inspections and audits. (1) If a person selling or providing grape product to a winery performs part of the processing function of a winery, the person shall report the sale or provision of the grape product and pay the tax imposed under ORS 473.045 (5).

(2) A person or winery required to pay a tax under ORS 473.045 (5) shall keep accurate records sufficient to enable the Oregon Liquor Control Commission to determine by inspection and audit the accuracy of the taxes paid or due the Oregon Wine Board and of reports made or due to the commission.

(3) The commission or a designee of the commission may inspect and audit the records referred to in subsection (2) of this section for the purpose referred to in subsection (2) of this section.

(4) A person or winery may not refuse to permit an inspection and audit under subsection (3) of this section during business hours.

(5) In addition to the penalties prescribed in ORS 473.992, a person or winery that delays transmittal of tax payments under ORS 473.045 (5) beyond the due date specified in ORS 473.045 shall pay five percent of the overdue amount for the first full or partial month of delay and one percent of the overdue amount for each full or partial month of delay thereafter.

(6) If a winery willfully refuses to turn over tax moneys withheld under ORS 473.045 (5), the winery shall pay an additional amount equal to twice the amount of the tax moneys not turned over. [2003 c.797 §8]

576.775 Disposition of moneys; research and promotion. Moneys received on behalf of the Oregon Wine Board pursuant to ORS 473.030 (4) and 473.045 shall be deposited into the account created by the board under ORS 182.470 and are continuously appropriated to the board as provided in ORS 182.470, exclusively for use by the board in carrying out the provisions of ORS 576.750 to 576.775. The board shall allocate a portion of the moneys received from sources other than fees toward research in enology and viticulture and toward promotion of the Oregon wine grape growing and wine making industries, including administrative costs associated with either category. [2003 c.797 §10; 2005 c.22 §408]

576.800 [1997 c.9 §1; renumbered 571.350 in 2009]

576.805 [1997 c.9 §2; renumbered 571.355 in 2009]

576.810 [1997 c.9 §3; 1999 c.105 §4; renumbered 571.360 in 2009]

576.815 [1997 c.9 §6; renumbered 571.365 in 2009]

576.820 [1997 c.9 §4; repealed by 1999 c.105 §3]

576.821 [1999 c.105 §2; renumbered 571.370 in 2009]

PENALTIES

576.990 [Repealed by 1953 c.119 §2]

576.991 Penalties. (1) Violation of the provisions of ORS 576.024 is a Class B violation.

(2) Violation of any provision of ORS 576.051 to 576.455 is a Class C misdemeanor. [1953 c.489 §38; subsection (1) enacted as 1955 c.572 §6; subsection (4) of 1957 Replacement Part enacted as 1957 c.447 §19; subsection (5) of 1957 Replacement Part enacted as 1957 c.447 §17; 1959 c.596 §81; subsection (2) enacted as 1967 c.388 §3; 1983 c.740 §224; subsection (4) of 1997 Edition enacted as 1997 c.9 §5; 1999 c.1051 §203; subsection (4) renumbered 571.993 in 2009; 2011 c.597 §237]