

CHAPTER 93

AN ACT

HB 2616

Relating to the Oregon Wheat Commission; creating new provisions; and amending ORS 578.010, 578.020, 578.025, 578.070, 578.090, 578.105, 578.151, 578.211 and 578.216.

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

SECTION 1. Sections 2 to 5 of this 2013 Act are added to and made a part of ORS chapter 578.

SECTION 2. (1) If a first purchaser of grain 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 first purchaser on forms provided by the Oregon Wheat 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 for all or a part of grain production that normally would be performed by another person as first purchaser, the producer shall report sales of the grain from the production of the producer on forms provided by the 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.

SECTION 3. (1) In addition to the penalty established in ORS 578.990, any person who delays transmittal of assessment moneys beyond the time set by the Oregon Wheat Commission shall pay a civil penalty to the commission 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) The 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, the commission may establish a penalty or interest rate that is consistent with that order or agreement.

SECTION 4. (1) If a person responsible for the transmittal of assessment moneys to the Oregon Wheat Commission fails to relinquish assessment moneys collected, the person shall pay a civil penalty to the commission equal to twice the amount of the unrelinquished assessment moneys.

(2) The 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 this chapter.

(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 the 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 commission 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 commission.

SECTION 5. (1) As used in this section:

(a) "Depository" has the meaning given that term in ORS 295.001.

(b) "Financial institution" has the meaning given that term in ORS 706.008.

(2) Moneys that a person collects or receives from an assessment levied by the Oregon Wheat Commission and other moneys that the commission receives must be paid to the authorized agent of the commission and, except as provided under subsection (3) of this section, promptly deposited into an account established by the commission in a depository 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 of the 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.

(3) The commission may deposit moneys into an account established by the commission in a financial institution that is not a depository if the amount on deposit is at all times fully insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or another appropriate federal regulatory body responsible for insuring amounts on deposit with the financial institution for the benefit of depositors.

(4) Subject to approval by the Director of Agriculture, the commission may invest moneys the commission collects or receives. Except as provided in subsection (5) of this section, investments the 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.

(5) In addition to or in lieu of investments described in subsection (4) of this section, the commission may invest in the investment pool described in ORS 294.805. For purposes of ORS 294.805 to 294.895, the commission is a public corporation and the secretary-treasurer of the commission is a local government official.

(6) Interest earned from any moneys a commission deposits or invests under this section is available to the commission in a manner consistent with the commission's annual budget.

(7) Moneys may not be withdrawn from or paid out of an account established by the commission except upon order of the commission, and upon checks or other orders on the account that are signed by the secretary-treasurer or by another commission member designated by the commission and countersigned by the chairperson or vice chairperson or by another member designated by the commission. The secretary-treasurer of the commission shall keep a receipt, voucher or other written record, showing clearly the nature and items covered by each check or other order.

SECTION 6. ORS 578.010 is amended to read: 578.010. As used in this chapter, unless the context requires otherwise:

(1) "Commercial channels" means the sale of [*wheat or other grains*] **grain** for use as food, feed[,] or seed, or any industrial or chemurgic use, when sold to any commercial buyer, dealer, processor[,] or cooperative, or to any person, public or private, who resells any [*wheat or other grains*] **grain** or product produced from [*wheat or other grains*] **grain**.

(2) "Commission" means the Oregon Wheat Commission.

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

(4) "First purchaser" means any person, corporation, association or partnership that buys [*wheat or other grains*] **grain** from the [*grower*] **producer** in the first instance, or any lienholder, public or private, who may possess [*wheat or other grains*] **grain** from the [*grower*] **producer** under any lien.

(5) "Grain" means barley, canola, corn, flaxseed, mustard, oats, rye, soybeans, grain sorghum, triticale, wheat and any other cereal grain for which standards are established or followed by the State Department of Agriculture.

[5] (6) ["Grower"] "Producer" means:

(a) Any landowner personally engaged in growing [*wheat or other grains*] **grain**;

(b) A tenant of the landowner personally engaged in growing [*wheat or other grains*] **grain**;

(c) Both the owner and the tenant jointly; and

(d) Any other person, partnership, association, corporation, cooperative, trust, sharecropper or

other business units, devices or arrangements engaged in growing [*wheat or other grains*] **grain**.

[6] (7) "Sale" includes any pledge or mortgage of [*wheat or other grains*] **grain**, after harvest, to any person, public or private.

SECTION 7. ORS 578.020 is amended to read: 578.020. (1) The Legislative Assembly finds and declares that:

(a) It is in the interest of all the people that the abundant natural resources of Oregon be protected, fully developed and uniformly distributed.

(b) The growing of [*wheat and other grains*] **grain** is an agricultural industry that contributes to the economic welfare of Oregon.

(c) Because a surplus of [*wheat and other grains*] **grain** is grown in this state and, during recent years, that surplus has been in excess of all available markets, it is necessary that additional markets for [*wheat and other grains*] **grain** be found in order to provide profitable enterprises for [*growers*] **producers** and to provide employment for labor and industry dependent upon [*wheat and other grains*] **grain**.

(2) The purpose of this chapter is to promote the public health and welfare by providing means for the protection and stabilization of industry for [*wheat and other grains*] **grain produced** in this state.

SECTION 8. ORS 578.025 is amended to read: 578.025. (1) The State Department of Agriculture shall:

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

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

(c) Carry out the assigned organizational procedures under this chapter, including providing input to the Director of Agriculture for carrying out the duties of the director regarding the appointment and removal of members of the commission;

(d) Review budgets submitted to the director by the commission; and

(e) Adopt rules to carry out the provisions of this chapter.

(2) Except as provided in ORS 578.216, the department shall review plans and projects recommended by the commission for the promotion of [*wheat or other grains*] **grain**, and for advertising and research and the dissemination of consumer and industry information for [*wheat and other grains*] **grain**. The department shall conduct the review to ensure that the plan or project information is:

(a) Factual;

(b) Not disparaging to commodities; and

(c) Consistent with the purposes of this chapter.

SECTION 9. ORS 578.070 is amended to read:

578.070. The Oregon Wheat Commission shall elect a chairperson, [and] vice chairperson **and secretary-treasurer from among its members.**

SECTION 10. ORS 578.090 is amended to read:

578.090. (1) Consistent with the general purposes of this chapter, the Oregon Wheat Commission shall establish the policies to be followed in accomplishing those purposes.

(2) In the administration of this chapter, the commission has the following duties, authorities and powers:

(a) To conduct a campaign of research, education and publicity.

(b) To lease, purchase or own the real or personal property deemed necessary in the administration of this chapter.

(c) To adopt rules as described in ORS 578.060 regarding the payment of per diem allowance and expenses of commission members while actually engaged in the performance of official duties, including necessary travel time.

[(d) For wheat:]

[(A) To find new markets for wheat and wheat products.]

[(B) To give, publicize and promulgate reliable information showing the value of wheat and wheat products for any useful and profitable purpose.]

[(C) To make public and encourage the widespread national and international use of the special kinds of wheat and wheat products produced from the special varieties of wheat grown in Oregon.]

[(D) To investigate and participate in studies of the problems peculiar to the producers of wheat in Oregon.]

[(E) To take such action as the commission deems necessary or advisable in order to stabilize and protect the wheat industry of the state and the health and welfare of the public.]

[(e) For any other grains assessed by the commission:]

[(A)] (d) To find new markets for grains and grain products.

[(B)] (e) To give, publicize and promulgate reliable information showing the value of grains and grain products for any useful and profitable purpose.

[(C)] (f) To make public and encourage the widespread national and international use of Oregon grains and grain products.

[(D)] (g) To investigate and participate in studies of the problems peculiar to the grain producers in Oregon.

[(E)] (h) To take such action as the commission deems necessary or advisable in order to stabilize and protect the grain industry of the state and the health and welfare of the public.

(i) To levy assessments.

(3) In addition to exercising the powers listed in subsection (2) of this section, the commission may exercise the same powers that a commodity commission may exercise under ORS 576.304 (1) and (3) to (14) or 576.306.

SECTION 11. ORS 578.105 is amended to read:

578.105. (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) The Oregon Wheat Commission may, consistent with the purposes of the commission, develop intellectual property that relates to [wheat or other assessed grains] **grain** or assists in the implementation, maintenance or development of commission programs. The 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. The commission may 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 the commission as a result of the 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.

SECTION 12. ORS 578.151 is amended to read:

578.151. The Oregon Wheat Commission shall:

(1) Adopt a budget, obtain budget approval and submit financial statements in the same manner as a commodity commission acting under ORS 576.416.

(2) [Receive, deposit, invest, expend and budget] **Expend** moneys in the same manner as a commodity commission acting under ORS 576.375, 576.420, 576.440 and 576.445.

SECTION 13. ORS 578.211 is amended to read:

578.211. (1)(a) The Oregon Wheat Commission may assess, levy and collect an assessment, the amount of which the commission shall determine, on all units of [wheat grown or produced in this state and sold in commercial channels and on units of any other grains] **grain** grown or produced in this state and sold in commercial channels. The commission may not apply an assessment to any transaction that occurred prior to the date that the commission order assessing the assessment was entered.

(b) The 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 [wheat or other grains] **grain.**

(c) All casual sales of [wheat or other grains] **grain** made by the producer direct to the consumer are exempt from the assessment.

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

(2) The commission shall assess and levy an assessment under subsection (1) of this section to the producer at the time and in the manner prescribed by the commission by rule. The commission is the owner of a collected assessment. A person who col-

lects 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 prescribed by the commission by rule. The assessment shall be deducted as provided by this section whether the *[wheat or other grains are]* **grain** is stored in this or another state.

(3) A lienholder who possesses *[wheat or other grains]* **grain** under the lien shall deduct the assessment from the proceeds of the claim secured by the lien when the *[wheat or other]* grain is pledged or mortgaged.

(4) Notwithstanding subsection (2) of this section[,] **and subject to section 2 of this 2013 Act**, the commission may assess and levy an assessment and collect an assessment from a first purchaser at the time and in the manner prescribed by the commission by rule.

(5) A person who believes that the amount of an assessment is incorrect may apply to the commission within 60 days after paying the assessment for a refund of the excess amount paid.

(6) An assessment under this section is a lien on the *[wheat or other]* grain and has priority over other liens or encumbrances on the *[wheat or other]* grain except liens created by a statute of this state.

(7) The commission may, by rule, establish exemptions from assessment based on:

- (a) *[Wheat or other]* Grain quantities;
- (b) Types of *[wheat sale or other]* grain sale; and

(c) Types of *[wheat producer or other]* grain producer.

SECTION 14. ORS 578.216 is amended to read: 578.216. (1) In addition to any refund permitted under ORS 578.211, the Oregon Wheat Commission may adopt rules that provide for the commission to refund all or part of an assessment on *[wheat or on other grains]* **grain** upon request of the person paying the assessment.

(2) If the commission adopts rules pursuant to subsection (1) of this section that provide for a refund to be at least equal in amount to the portion of the assessment on *[wheat or other grains]* **grain** that is used by the commission for advertising and product promotion:

(a) Plans and projects recommended by the commission are exempt from State Department of Agriculture review under ORS 578.025 (2); and

(b) The commission may vote to eliminate the public member position on the commission.

SECTION 15. The Oregon Wheat Commission shall ensure that a member of the commission is holding office as the elected secretary-treasurer of the commission no later than 30 days after the effective date of this 2013 Act.

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