

## TITLE 47

# AGRICULTURAL MARKETING AND WAREHOUSING

- Chapter 576. Agricultural Marketing Generally  
577. State Flax and Linen Board  
578. Oregon Wheat Commission; Wheat Commission Fund Tax  
579. Oregon Potato Commission; Potato Commission Fund Tax  
580. Oregon Filbert Commission; Filbert Commission Account Tax  
582. Oregon Dairy Products Commission; Dairy Products Commission Account Tax  
583. Milk Marketing  
585. Produce Dealers  
586. Warehouses; Grain Inspection  
587. Storage of Grain as Basis of Farm Credit

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## Chapter 576

### Agricultural Marketing Generally

#### DEFINITIONS

- 576.005 Definitions  
576.015 Short title

#### CREATION OF COMMODITY COMMISSIONS

- 576.055 Petition for establishment of commission for a particular commodity  
576.065 Petition filing fee; advancing moneys to pay cost of proposed hearing and referendum  
576.075 Hearings regarding establishment of commodity commission; notice of hearings  
576.085 Determination by department regarding need for commodity commission  
576.095 Referendum regarding establishment of commodity commission after determination of need by department  
576.105 Payment of expenses of hearings and referendum  
576.115 Supervision of hearings and referendum by department; informalities do not invalidate referendum  
576.125 Creation of commission; filing referendum result  
576.135 Oregon Dairy Products Commission deemed created under this chapter  
576.145 Oregon Filbert Commission deemed created under this chapter

#### MEMBERSHIP, DUTIES AND POWERS OF COMMISSION

- 576.205 Appointment of members of commission; number of growers and handlers  
576.215 Ex officio members of commission  
576.225 Qualifications of members  
576.235 Terms of members  
576.245 Member's office vacant when he ceases to be qualified  
576.255 Removal of members for inefficiency, neglect of duty or misconduct in office  
576.265 Traveling expenses of members  
576.275 Meeting place of commission  
576.285 Commission organization; meetings  
576.295 Limitation on commission's powers and duties by original petition or subsequent referendum  
576.305 Authority of commission generally  
576.315 Authority of commission to accept gifts and grants  
576.325 Authority of commission to levy tax on commodity sales; use of tax proceeds  
576.335 First purchaser of commodity to make reports and pay tax  
576.345 Producer to make reports of and pay tax on certain sales  
576.355 Penalty for delaying transmittal of funds

576.365	Penalty for refusal to turn over tax moneys to commission	<b>DISCONTINUANCE OF COMMISSION BY REFERENDUM; LIMITING OR EXPANDING POWERS OF COMMISSION</b>
576.375	Payment of commission moneys to authorized agent; deposit in General Fund; continuing appropriation	576.505 Referendum on continuance of commission; inclusion in ballot of proposition to limit or expand commission's powers
576.385	Bond required of person authorized to receive commission moneys	576.515 Department to conduct referendum; notice; expenses
576.395	Records and accounts of commission	576.525 Winding up commission's affairs if vote is in favor of discontinuance
576.405	Nonliability of state for acts or omissions of commission or agents	<b>PENALTIES</b>
		576.991 Penalties

## CROSS REFERENCES

Administrative orders of state agencies, Ch. 183  
 Department to administer and enforce legislation applying to production, processing and distribution of food products, 616.010  
 State agencies generally, Ch. 182

576.265

Per diem allowance for members, 576.305(14)  
 Subsistence and mileage allowance for travel, reimbursement, 292.210 to 292.260

## DEFINITIONS

**576.005 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Commercial channels" means the sale of the commodity for which a commission is established for use as food, industrial 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 this chapter.

(3) "Commodity" means any agricultural, horticultural, viticultural, apicultural, vegetable and animal products produced in this state.

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

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

(6) "Grower" means any person engaged in the production of a commodity for which a commission is created, and whose sales thereof in any one of the three years next preceding any referendum held under this chapter were \$500 or more.

(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 created, whether as an owner, agent, employee, broker or otherwise.

(8) "Producer" means a person or other legal entity producing a commodity for market for which a commission is established whether as landowner, landlord, tenant, sharecropper or otherwise. [1953 c.489 §1]

**576.010** [Repealed by 1953 c.119 §2]

**576.015 Short title.** This chapter may be known and cited as the Commodity Commission Act. [1953 c.489 §37]

**576.020** [Repealed by 1953 c.119 §2]

**576.030** [Repealed by 1953 c.119 §2]

**576.040** [Repealed by 1953 c.119 §2]

**576.050** [Repealed by 1953 c.119 §2]

## CREATION OF COMMODITY COMMISSIONS

**576.055 Petition for establishment of commission for a particular commodity.** Any 25 or more persons interested in the production of a particular commodity for which it is proposed to establish a commission may file a petition with the department asking that a commission be established for such commodity. The petition shall set forth:

(1) The name of the commodity for which the commission is to be established, and a description of it by genus, class, variety or other accurate and definite term.

(2) A concise statement of the reasons the establishment of a commission is requested.

(3) A request that a referendum be held among the growers of the commodity on the question of the establishment of a commission.

(4) Any desired limitation of the powers and duties provided for in ORS 576.305.

(5) The name and address of the individual who is authorized to represent the petitioners in all matters related to the establishment of the proposed commission as attorney in fact. [1953 c.489 §2]

**576.060** [Repealed by 1953 c.119 §2]

**576.065 Petition filing fee; advancing moneys to pay cost of proposed hearing and referendum.** (1) The petitions provided for in ORS 576.055 shall be accompanied by a filing fee of \$250.

(2) The department shall prepare a budget estimate, which shall include the cost of the preparation of the estimate, on the cost of the proposed hearings and the cost of the proposed referendum. The petitioners, within 30 days after their receipt of the budget estimates by their attorney in fact, shall remit to the department the difference between the filing fee of \$250 and the total budget estimate. If the petitioners fail to remit the difference, or for any other reason the proceedings for the establishment of a commission are terminated, any unexpended balance of the \$250 shall be retained by the department. If the petition results, after proper proceedings, in the creation of a commission, the balance of the filing fee and budget estimate remaining unexpended shall be returned to the petitioners by the department, and the commission shall return to the petitioners from the first moneys collected by it the difference between the filing fee and the budget estimate and the amount,

if any, returned by the department. [1953 c.489 §3]

**576.070** [Repealed by 1953 c.119 §2]

**576.075 Hearings regarding establishment of commodity commission; notice of hearings.** (1) Within 60 days after the petition has been filed with the department and upon payment of the total budget estimate required, the department shall cause notices to be given of the proposed hearings in each of the counties of the state where the commodity is grown upon the question of the desirability and necessity of creating such a commission, upon the propriety of the petition and other proceedings under this chapter and upon other relevant questions. All growers, and all other interested parties, shall have a right to attend such hearings and to be heard.

(2) The department shall hold a hearing in each county or in each congressional district in which during the last preceding crop year at least five percent of the total production of the commodity unit was produced, as determined by the department.

(3) The notices of hearing shall be published in a newspaper of general circulation throughout the county or district, as the case may be. [1953 c.489 §4]

**576.080** [Repealed by 1953 c.119 §2]

**576.085 Determination by department regarding need for commodity commission.** (1) After the hearings provided for in ORS 576.075, the department shall determine upon the facts presented and other relevant data and information available to it whether or not there is need for the proposed commission in the interest of the general welfare of the growers of the commodity. It shall record the determination, with its reasons for it, in the office of the Secretary of State.

(2) Subsequent petitions relating to the same commodity may not be filed or action taken thereon within one year from the date the department has recorded a determination denying the need for a commission as to such commodity.

(3) The department's determination of "need" for a proposed commission shall be based upon a consideration of the following factors as they may be applicable to any commodity:

- (a) The current market price to growers.
- (b) The costs of production, including all elements of cost.

(c) Market price trends.

(d) Stability of prices.

(e) Relationship between factors (a), (b), (c) and (d).

(f) Commodity utilization and the possibility of increasing commodity utilization by research, promotive advertising, improved marketing practices, and improving time or place utility. [1953 c.489 §5]

**576.090** [Repealed by 1953 c.119 §2]

**576.095 Referendum regarding establishment of commodity commission after determination of need by department.** After the department has made and recorded the determination that there is need for the creation of a commission, it shall within a reasonable time thereafter hold a referendum upon the proposition of the creation of the commission. Notice of such referendum shall be given in the same manner as notice of hearings is required to be given by ORS 576.075. The question shall be submitted by ballots upon which the words "For creation of a \_\_\_\_\_ (here to be inserted the name of the commodity) commission" and "Against creation of a \_\_\_\_\_ (here to be inserted the name of the commodity) commission" are printed, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of a commission. All growers of the particular commodity in the state are eligible to vote in the referendum. [1953 c.489 §6]

**576.100** [Repealed by 1953 c.119 §2]

**576.105 Payment of expenses of hearings and referendum.** The department shall pay, from the amounts paid to it under ORS 576.065, all the expenses resulting from the giving of notices mentioned in ORS 576.075 and 576.095, and from conducting the hearings and referenda, held for the purpose of creating a commission. [1953 c.489 §7]

**576.110** [Repealed by 1953 c.119 §2]

**576.115 Supervision of hearings and referendum by department; informalities do not invalidate referendum.** (1) The department shall supervise and conduct any referenda and hearings held under this chapter. The department shall issue appropriate regulations governing the conduct of any hearings and referenda, and provide for the registration of growers prior to the date of

a referendum, or prescribe other appropriate procedure for the determination of those eligible to vote at the referenda.

(2) No informalities in the conduct of a referendum or in any matters relating thereto shall invalidate any referendum held under this chapter, or the result thereof, if notice was given in substantially the same manner as provided in this chapter and if the referendum was fairly conducted.

(3) No proposition submitted by a referendum under this chapter shall be declared approved unless the proposition is favored in the manner as necessary for the creation of a commission, as provided in subsection (1) of ORS 576.125.

(4) Preceding any referendum held pursuant to this chapter, the department shall determine the number of growers in this state and their total production of the commodity for which a commission is proposed. The department's determination shall be predicated upon available relevant and reliable information tending to establish such facts. At the request of the department any handlers or other persons shall furnish to the department any information available relevant to the determination required of the department.

(5) All information submitted by a handler or other person shall be confidential and shall not be disclosed by the department or any of its officials or employees except to the extent that such disclosure is necessary in any proceeding instituted to challenge the correctness of the department's determination as permitted in subsection (6) of this section.

(6) The department's determination of the number of growers and their total production shall be filed with the county clerk and in the office of the county agent of each county and shall be deemed final and no appeal may be taken therefrom except on grounds that the department's determination was arbitrary or capricious or without any reasonable foundation in fact. Any such appeal must be instituted by filing a complaint or other pleading in an appropriate proceeding at law or equity within 30 days after the date the determination is filed. [1953 c.489 §8]

**576.120** [Repealed by 1953 c.119 §2]

**576.125 Creation of commission; filing referendum result.** (1) The department shall declare a commission created, if the propo-

sition received an affirmative vote in the referendum of two-thirds of the growers voting and if such total voting growers are the producers of more than one-third of the total quantity of the commodity in the state, as determined by the department.

(2) Within 10 days of the date of a referendum the department shall file with the Secretary of State a declaration of the result of the referendum. The Secretary of State shall record the declaration in an appropriate book in his office. [1953 c.489 §9]

**576.130** [Repealed by 1953 c.119 §2]

**576.135 Oregon Dairy Products Commission deemed created under this chapter.** The Oregon Dairy Products Commission, established by ORS chapter 582, shall continue in full force and effect as a commission established pursuant to this chapter from the time the rights, powers, privileges and immunities of such commission expire pursuant to the laws relating thereto. At the time this chapter becomes applicable to such commission, it shall be deemed to have been created in all respects pursuant to this chapter and shall be vested with all of the rights, powers, privileges and immunities duly conferred upon commissions created pursuant to this chapter. [1953 c.489 §34]

**576.140** [Repealed by 1953 c.119 §2]

**576.145 Oregon Filbert Commission deemed created under this chapter.** The Oregon Filbert Commission, established by ORS chapter 580, shall continue in full force and effect as a commission established pursuant to this chapter from the time the rights, powers, privileges and immunities of such commission expire pursuant to the laws relating thereto. At the time this chapter becomes applicable to such commission, it shall be deemed to have been created in all respects pursuant to this chapter and shall be vested with all of the rights, powers, privileges and immunities duly conferred upon commissions created pursuant to this chapter. [1953 c.489 §35]

**576.150** [Repealed by 1953 c.119 §2]

**576.160** [Repealed by 1953 c.119 §2]

**576.170** [Repealed by 1953 c.119 §2]

**576.180** [Repealed by 1953 c.119 §2]

**576.190** [Repealed by 1953 c.119 §2]

**576.200** [Repealed by 1953 c.119 §2]

### MEMBERSHIP, DUTIES AND POWERS OF COMMISSION

**576.205 Appointment of members of commission; number of growers and handlers.** (1) The commission shall be composed of from 5 to 11 members, as the Governor determines, all of whom shall be appointed by the Governor. Each member shall continue in office until his successor is appointed.

(2) A majority of the members shall be growers and at least one member shall be a handler. [1953 c.489 §11]

**576.210** [Repealed by 1953 c.119 §2]

**576.215 Ex officio members of commission.** The director of the department and the dean of the school of agriculture of Oregon State College, or their respective official representative, shall be ex officio members of the commission, without right to vote. [1953 c.489 §12]

**576.220** [Repealed by 1953 c.119 §2]

**576.225 Qualifications of members.** (1) Each member of the commission shall have the following qualifications which shall continue during his term of office:

(a) Each shall be a citizen of the United States.

(b) Each shall be a bona fide resident of the state.

(c) Each shall have demonstrated through membership in a grower's organization, the public service or otherwise, an active interest in the development of the commodity industry in Oregon.

(2) The grower members shall be and have been actively engaged in growing, and the handler members in the handling, of the commodity for which the commission is established in this state for a period of at least five years, and shall derive a substantial proportion of their incomes from the sale of the commodity. [1953 c.489 §13]

**576.235 Terms of members.** Members of the commission shall be appointed within 30 days after the filing of the declaration by the department with the Secretary of State, and the original members shall be appointed as follows:

(1) Approximately, as the Governor determines, one-third of the members for a term ending June 30 next following.

(2) One-third of the members for a term ending one year from June 30 next following.

(3) One-third of the members for a term ending two years from June 30 next following.

Thereafter, each member shall be appointed for a term ending three years from the date of expiration of the term for which his predecessor was appointed, except in case of a vacancy when the appointee shall serve the unexpired part of the term of the member whom he replaced. [1953 c.489 §14]

**576.245 Member's office vacant when he ceases to be qualified.** The Governor shall immediately declare the office of any member of the commission vacant whenever the Governor finds that such member has ceased to be an active grower or handler in this state, has become a resident of another state or is unable to perform the duties of his office. [1953 c.489 §15]

**576.255 Removal of members for inefficiency, neglect of duty or misconduct in office.** (1) The Governor may remove any member of the commission for inefficiency, neglect of duty or misconduct in office, after a public hearing thereon and after serving upon the member a copy of the charges against him, 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 him.

(2) In every case of removal, the Governor shall file in the office of the Secretary of State a complete statement of all charges against the member, and his findings thereon, together with a record of the entire proceedings had in connection therewith. [1953 c.489 §16]

**576.265 Traveling expenses of members.** Members of the commission shall be paid their actual traveling expenses incurred while necessarily engaged in the transaction of official business of the commission. [1953 c.489 §17]

**576.275 Meeting place of commission.** The commission shall establish a meeting place anywhere within this state it selects, but the selection of the location shall be guided by consideration for the convenience of the majority of those most likely to have business with the commission or be affected by its acts. [1953 c.489 §18]

**576.285 Commission organization; meetings.** The commission shall meet as soon as practicable for the purposes of organizing. It shall elect a chairman 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 chairman. The chairman 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]

**576.295 Limitation on commission's powers and duties by original petition or subsequent referendum.** The commission established by the department's declaration after the referendum as provided in ORS 576.125 has the powers and duties provided in this chapter, except as those powers and duties are limited in the petition as provided in subsection (4) of ORS 576.055, or pursuant to a referendum held under ORS 576.505. [1953 c.489 §10]

**576.305 Authority of commission generally.** The commission may:

(1) Conduct scientific research to discover and develop the commercial value of the commodity and products thereof.

(2) Disseminate reliable information founded upon the research undertaken under this chapter, showing the value of the commodity and its products for any purpose for which they may be found useful and profitable.

(3) Study legislation, state and federal, with respect to tariffs, duties, reciprocal trade agreements, import quotas and other matters concerning the effect on the commodity industry, and represent and protect the interests of the commodity industry with respect to any legislation or proposed legislation or executive action which may affect that industry.

(4) Sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter.

(5) Enter into the contracts advisable in carrying out the purposes of the commission as authorized by this chapter.

(6) Borrow money, not in excess of its estimate of its revenue from the current year's crop, so that the crop which is re-

sponsible for the accumulation of funds may receive the benefits of the efforts for which the funds are used.

(7) Make grants to research agencies for financing special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the commission authorized by this chapter.

(8) Appoint officers and prescribe their duties.

(9) Cooperate with any local, state or national organization or agencies, whether created by law or voluntary, engaged in work or activities similar to that of the commission; and enter into contracts with such organizations or agencies for carrying on joint programs.

(10) Act jointly and in cooperation with the Federal Government or any agency thereof in the administration of any program of the government or a governmental agency deemed by the commission to be beneficial to the commodity industry of this state, and expend funds in connection therewith, provided that such program is compatible with the powers conferred by this chapter.

(11) Prosecute, in the name of the State of Oregon, any suit or action for the collection of the tax provided for in ORS 576.325.

(12) Adopt, rescind, modify or amend all proper regulations, orders and resolutions for the exercise of its powers and duties. A copy of any of the commission's orders shall be filed with the department, and a copy mailed to the county agent of the counties in which the commodity is produced.

(13) Enter into contracts for advertising the commodity and to develop new markets through such advertising.

(14) Establish a reasonable per diem allowance, in addition to the reimbursement permitted by ORS 576.265, to members of the commission while engaged in business of the commission. [1953 c.489 §20]

**576.315 Authority of commission to accept gifts and grants.** The 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]

**576.325 Authority of commission to levy tax on commodity sales; use of tax proceeds.** (1) The commission may assess, levy and collect a tax, the amount of which

the commission shall determine, on all units of the commodity grown in this state and sold in commercial channels; provided, however, that no such tax shall apply to any transaction which occurred prior to the date the commission order making such assessment was entered. All casual sales of the commodity made by the producer direct to the consumer shall be exempt from said tax.

(2) The amount of the tax provided for in subsection (1) of this section shall not exceed one and one-half percent of the average unit price received by the producer on the farm after severance and before packaging or processing, during the three years immediately preceding, unless a greater tax, which in no case shall exceed 10 percent, is specifically provided:

(a) In the petition provided for in ORS 576.055.

(b) By a referendum held pursuant to ORS 576.505, or

(c) By a special referendum, held for that purpose, which referendum may be held annually.

(3) The tax shall be levied and assessed to the producer at the time of sale and shall be deducted by the first purchaser from the price paid to the producer.

(4) All funds expended in the administration of this chapter and the payment of claims growing out of the performance of duties or activities pursuant thereto shall be paid from the funds derived from the tax levied under this section, except as any funds received under ORS 576.315 are available. [1953 c.489 §21]

**576.335 First purchaser of commodity to make reports and pay tax.** (1) The first purchaser shall make reports to the commission on forms prescribed by the commission.

(2) No first purchaser shall fail to make the report, or make the report falsely.

(3) The commission shall fix dates upon which reports shall be made thereto by all first purchasers. Upon such dates all tax moneys collected by the purchaser shall be turned over to the commission which shall issue receipts therefor and make suitable records thereof. [1953 c.489 §§24,26]

**576.345 Producer to make reports of and pay tax on certain sales.** When a first purchaser lives or has his office in another state or is a federal or other governmental agency, the producer shall report all sales made to such purchaser on forms provided

by and pay the tax directly to the commission, unless such first purchaser voluntarily makes the proper deduction and remits the proceeds to the commission. [1953 c.489 §25]

**576.355 Penalty for delaying transmittal of funds.** In addition to the penalties prescribed in ORS 576.991, any first purchaser or other person who delays transmittal of funds beyond the time set by the commission shall pay five percent of the amount due for the first month of delay and one percent of the amount due for each month of delay thereafter. [1953 c.489 §28]

**576.365 Penalty for refusal to turn over tax moneys to commission.** If any first purchaser, or other person responsible for transmittal of the tax to the commission, wilfully refuses to turn over tax moneys collected under ORS 576.375, he shall pay an additional fine equal to twice the amount of the tax moneys so withheld. [1953 c.489 §27]

**576.375 Payment of commission moneys to authorized agent; deposit in General Fund; continuing appropriation.** All moneys received by any person from the tax levied under the authority of ORS 576.325 or other moneys received by the commission shall be paid to the authorized agent of the commission who shall deposit the same in the General Fund of the State Treasury to the credit of an account to be known as \_\_\_\_\_ (name of the commodity here to be inserted) Commission Account. Such account hereby is appropriated continuously for the payment of all expenses of the commission in carrying out the powers conferred on the commission. Notwithstanding the provisions of ORS 291.238, claims approved by the commission for payment of the expenses of the commission shall be paid as other claims against the state and no specific biennial appropriation by the Legislative Assembly or allotment is required. [1953 c.489 §22]

**576.385 Bond required of person authorized to receive commission moneys.** The person authorized by the commission to receive 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 in favor of the commission and the State of Oregon, jointly and severally, conditioned on the faithful performance of his duties and the strict accounting of all funds of the commission, in the penal sum of \$20,000. The premiums of



such bonds shall be paid by the commission. [1953 c.489 §23]

**576.395 Records and accounts of commission.** The 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]

**576.405 Nonliability of state for acts or omissions of commission or agents.** The State of Oregon is not liable for the acts or the omissions of the commission or agents or officers thereof. [1953 c.489 §36]

**576.410 to 576.500** [Reserved for expansion]

**DISCONTINUANCE OF COMMISSION BY REFERENDUM; LIMITING OR EXPANDING POWERS OF COMMISSION**

**576.505 Referendum on continuance of commission; inclusion in ballot of proposition to limit or expand commission's powers.**

(1) After five years from the date any commission was created, a referendum may be held at the petition of five percent of the growers of the commodity or 200 growers of the commodity, whichever is less, upon the question of continuance of the commission. The question shall be submitted by ballots upon which the words "For discontinuance of the \_\_\_\_\_ (here insert the name of the commodity) commission" and "Against discontinuance of the \_\_\_\_\_ (here insert name of commodity) commission" are printed, with a square before each proposition and a direction to insert an "X" mark in the square before the proposition which the voter favors. In the event a referendum is held as provided in this section, no further referendum on the question of continuance of such commission shall be held for five years from the date the result of the previous referendum was declared.

(2) Not less than 60 days prior to the referendum provided for in subsection (1) of this section, five percent of the growers or 200 growers, whichever is less, may file a petition with the commission asking inclusion on the ballot of a proposition for limiting or expanding the powers of the commission. However, no power shall be granted to the commission which is not permitted under this chapter. [1953 c.489 §31]

**576.515 Department to conduct referendum; notice; expenses.** (1) The department shall conduct the referendum provided for in ORS 576.505, and cause at least 30 days' notice thereof to be given.

(2) The cost of such referendum shall be paid by the commission. [1953 c.489 §32]

**576.525 Winding up commission's affairs if vote is in favor of discontinuance.** If the vote at the referendum provided in ORS 576.505 is in favor of discontinuation, the commission shall as rapidly as possible terminate its activities, convert its assets into cash and do all other things necessary to terminate its activities. At the termination of such activities, any funds remaining in possession of the commission shall be paid to Oregon State College for research regarding the commodity for which the commission was created. [1953 c.489 §33]

**576.535 to 576.985** [Reserved for expansion]

**PENALTIES**

**576.990** [Repealed by 1953 c.119 §2]

**576.991 Penalties.** (1) Violation of this chapter is punishable, upon conviction, by a fine of not more than \$500, or by imprisonment in the county jail for not more than 90 days, or both.

(2) District and justice courts shall have concurrent jurisdiction with circuit courts in all prosecutions under this chapter. [1953 c.489 §38]

