# Chapter 571

# Nurseries and Nurserymen


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## CROSS REFERENCES

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

(1) "Agent" means any person soliciting orders for nursery stock, and such agent's license shall not be issued unless the agent's principal has given the department written authorization to issue such license.

(2) "Dealer" means any person who sells nursery stock which he has purchased, accepted on consignment or collected in the wild. Supplying nursery stock pursuant to any contract involving landscaping shall be deemed a sale thereof.

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

(4) "Grower" means any person who grows nursery stock for sale, including individual members of cooperative associations.

(5) "Not regularly engaged in the business" means sales of nursery stock, incident to home planting operations, by persons who do not display such nursery stock for sale on any stand, market stall, store or any other place of business, and who do not advertise such nursery stock for sale by use of signboards, placards, radio, newspapers or any other circulating medium; provided, that a berry grower may be considered as coming within that meaning when he advertises such stock as for sale only at premises where grown.

(6) "Nursery stock" includes all florist stock, such as bulbs, corms, roots, rooted herbaceous plants, cuttings or cut greenery used for ornamental purposes, whether grown in boxes, benches, pots, cold frames or hot beds; and trees, shrubs, vines, fruiting plants, cuttings, grafts, scions, buds, fruit pits and other seeds of fruit, forest and ornamental trees and shrubs, both deciduous and evergreen, and berry plants, such as strawberries and plants of the genus rubus. This definition includes all stock cultivated or collected in the wild; provided, that the following exceptions apply: cut flowers, field crops, turf, vegetable and flower seeds, and such annual flowering plants and cut greenery as have been included on an official exemption list, which shall be compiled by the department. No division of nursery stock grown in a nursery for other purposes such as bloom, seed, etc., shall be made.

(7) "Person" includes corporations, companies, partnerships or individuals. When construing and enforcing the provisions of this chapter, the act, omission or failure of any officer, agent, servant or other individual, authorized or employed by any person as above defined, within the scope of his employment or office, shall in every case be deemed to be the act, omission or failure of such person, as well as that of the officer, agent, servant or other employe.

**571.020 Bureau of Nursery Service established; superintendent; qualifications of superintendent.** (1) The department hereby is authorized and directed to maintain the Bureau of Nursery Service, which operates under supervision of the chief of the division of plant industry. The bureau shall consist of a superintendent of nursery service and such inspectors or other assistants as are needed to carry out the functions of the bureau.

(2) The superintendent of the bureau shall, as a prerequisite to appointment by the department, have a technical training in plant diseases and pests equivalent to that required for graduation from an approved agricultural college.

**571.030 Functions of bureau.** The functions of the bureau shall consist of carrying out the provisions of this chapter, of inspecting the nursery stock of dealers and other persons, and places of business provided for under this chapter and checking the licenses and licensing of persons affected by this chapter, investigation of violations of this chapter, dissemination of information among growers relative to treatment of nursery stock for both prevention and elimination of attacks by disease and insects and any other duties which may be prescribed by the department as of service to the nursery industry.

**571.040 Department rules and regulations; printing; enforcement.** (1) The department may, from time to time, make all needful rules and regulations for administration of this chapter, and provide the forms necessary to carry it into effect. The rules and regulations shall be printed in pamphlet form as provided by ORS 561.190.

(2) The department and the Bureau of Nursery Service shall enforce the provisions of this chapter and the rules and regulations made in pursuance thereof.

**571.050 Operation without license prohibited.** No person shall operate as a grower, dealer or agent, as defined in ORS 571.010, without first obtaining a license so to do from the department.

**571.060 Annual licenses; fee schedule; exceptions.** (1) Every grower who grows in excess of one-half acre of nursery stock for sale shall pay a minimum license fee of $17.50 annually, and each grower shall pay the further sum of 75 cents for each acre or portion thereof in excess of one acre; provided, that in no case shall a grower's license fee exceed $37.50.

(2) Every grower who sells nursery stock from one-half acre or less shall pay an annual license fee of $7.50.

(3) Every grower shall be entitled to one sales location under the license issued by authority of this chapter; provided, that each grower shall pay an annual fee of $12.50 for each sales yard, branch store, market stall, peddling vehicle or sales location in addition to the one provided for in this subsection, if such grower does not already have a dealer's license for such additional location or vehicle.

(4) Any person selling berry plants only, of his own production, shall pay an annual license fee of $3.

(5) Every dealer shall pay a separate annual license fee of $12.50 for each sales yard, branch store, market stall, peddling vehicle or sales location.

(6) Every agent shall pay an annual license fee of $1.

(7) The provisions of this chapter do not apply to the sale of nursery stock by a person who is not regularly engaged in the business when such sales are only incident to the seller's home planting operations, and when the total amount of the gross annual sales by any such person does not exceed $100 annually.

**571.070 Fee for person coming under two or more licensing provisions; licenses, date of issue and expiration; form, posting and numbering of license; shipping permit number.** (1) The higher license fee, and none other, applies in all cases where the licensee, or person subject to the license provisions of this chapter, operates in such a manner as to come under two or more of the licensing provisions of this chapter; provided, that this section shall not be construed as being in conflict with ORS 571.060 which requires that a separate license fee of $12.50 be paid for each separate place of business.

(2) All licenses shall bear the date of issue and shall expire on June 30, next following the date of issue, unless sooner revoked by the department.

(3) All licenses shall be in the form of a certificate and shall be posted conspicuously in the main office or place of business of the licensee and shall be numbered serially under the direction of the department.

(4) A shipping permit number shall be issued to each licensee and the permit number shall accompany all shipments and deliveries of nursery stock.

**571.080 Growers and dealers to make additional payments to bureau; exception.** (1) Every nursery stock dealer and every grower of nursery stock shall pay annually to the Bureau of Nursery Service of the State Department of Agriculture, at the same time that he pays his license fee, a sum of money equal to 10 percent of his annual license fee as such dealer or grower.

(2) Every grower of nursery stock shall, at the time of paying his license fee, pay annually to the Bureau of Nursery Service, in addition to the tax first mentioned in this section, the further sum of $1 per acre for every acre of nursery stock grown by him.

(3) Berry plant growers, licensed exclusively as such, are exempted from the payments imposed by this section.

**571.090 Disposition of moneys collected under ORS 571.080.** (1) All moneys received and collected by the bureau under ORS 571.080 shall be deposited in the Department of Agriculture Account and shall be expended by the department pursuant to agreements entered into between the department and the director of the Oregon state agricultural experiment station with the advice of a nursery industry council.

(2) Such moneys hereby are appropriated for the use of the director of the Oregon state agricultural experiment station in carrying on experimental and research projects and investigations agreed upon by him and the Bureau of Nursery Service and directed toward the prevention and elimination of plant diseases, insect pests and the development and improvement of cultural methods beneficial to the nursery industry.

**571.100 Sale of infested stock and false representations regarding stock prohibited.** No nurseryman, dealer, importer, agent or landscape gardener shall sell or furnish any nursery stock that is infested or infected with a dangerous pest or disease, or shall sell or furnish any nursery stock representing the stock to be of a name, age or variety different from what the nursery stock

actually is, or make any other false or fraudulent representation in connection with the sale of nursery stock; provided, that the failure of not more than five percent of any such nursery stock so furnished or sold to be true to name, age or variety is not a violation of this chapter.

**571.110 Transportation of nursery stock without official inspection tag prohibited.** No nursery stock or other plant products except cut flowers, field turf, vegetable and flower seed shall be transported or accepted for transportation within the state that does not carry the official inspection tag authorized by the department.

**571.120 Fees and moneys; disposition.** All fees and moneys collected or received by the department under this chapter, except as provided in ORS 571.090, shall be paid into the General Fund and be accredited to the Department of Agriculture Account. Such fees and moneys hereby are appropriated for the use of the department in carrying out the provisions of this chapter and in defraying the necessary expenses in connection with the administration thereof.

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

(a) That the applicant or licensee has been guilty of fraud, deception or misrepresentation in the handling or sale of nursery stock.

(b) That the licensee was guilty of fraud or deception in the procurement of such license.

(c) That the licensee has violated any provisions of this chapter, excepting ORS 571.080.

(2) The provisions of the department of agriculture statute pertaining to revocation, suspension or refusal to issue a license apply to this section.

**571.140 Jurisdiction for enforcement; disposition of fines.** (1) Justice and district courts shall have concurrent jurisdiction with circuit courts of this state in all proceedings to enforce the provisions of this chapter.

(2) All fines imposed under this chapter shall, when collected, be paid to the treasurer of the county where imposed, shall be placed to the current expense fund of such county and be used to assist in defraying the expenses of horticultural inspection.

**571.150 Violation of chapter and false representations prohibited.** No person shall violate any provision of ORS 571.010 to 571.150 or any rule or regulation promulgated in pursuance thereof, or shall wilfully make a false statement in his application for a license as to his acreage in nursery stock or the amount of fee he shall pay.

**571.990 Penalties.** Violation of any of the provisions of ORS 571.010 to 571.150 is punishable, upon conviction, by a fine of not less than $20 nor more than $500.

## CHAPTER 572

**[Reserved for expansion]**