Chapter 570

1961 REPLACEMENT PART

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Plants; Inspection, Quarantine, Pest and Weed Control

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DEFINITIONS

570.005 Chapter definitions. As used in this chapter, unless the context requires otherwise:

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

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

COUNTY HORTICULTURAL INSPECTORS

570.010 County horticultural inspectors; appointment; term; powers and duties. (1) Upon petition of not less than 25 resident fruit growers of any county of this state, the county court of such county shall, subject to the approval of the director, appoint a county horticultural inspector, whose duties are:

(a) To inspect orchards, nurseries, trees, shrubs, vines, fruits, vegetables, plants, packing houses, warehouses, storerooms, farms and other places within the county.

(b) To visit and inspect the fruit drying and packing plants while such plants are in operation.

(c) To enforce the regulations required by the department governing the handling, drying and packing of prunes, apples, loganberries or other fruits evaporated and packed for human consumption.

(d) To enforce all laws of the state relating to such insect pests and such diseases as affect trees, vines, plants of any kind, or fruit or vegetables of any kind and all other horticultural laws, rules and regulations of the state.

(2) The county horticultural inspector shall hold his office during the pleasure of the county court.

570.015 Deputy inspectors. Upon a petition of not less than 25 resident fruit growers of any county of this state, the county court of such county may, subject to the approval of the director, appoint one or more deputy county horticultural inspectors. Each deputy inspector shall hold office during the pleasure of the county court and shall have and perform all the powers and duties of a county horticultural inspector.

570.020 Inspectors may enter premises. The county horticultural inspectors, deputy county horticultural inspectors and all other persons authorized to enforce the horticultural and inspection laws of Oregon are authorized and empowered to enter upon or into any premises, land, buildings, inclosures or other places for the purpose of inspecting any article which is subject to or may be subject to infestation with any insect injurious to any article which grows upon or in or from the soil by processes of plant growth, or the eggs, larvae or pupae of such insects or with any disease injurious to any such article or articles and for the further purpose of enforcing any of the laws of this state relating to horticultural quarantine or horticultural inspection or the abatement of horticultural nuisances or any other duties imposed by law upon such inspectors and other persons authorized to enforce the inspection and horticultural laws of Oregon.

570.025 Instruction, education and supervision of inspectors; reports. The department shall instruct and educate the county and deputy county horticultural inspectors as to the laws and quarantine regulations of the state, and the rules and regulations of the department. The inspectors shall perform their duties under the general supervision of the department, to which they shall make reports in the manner prescribed by the department.

570.030 Compensation of inspectors; office supplies; clerical help. (1) Each county horticultural inspector and deputy inspector shall be paid for his services by the county and his actual necessary expenses incurred in the performance of his duties. The county horticultural inspector and each deputy inspector shall report monthly to the department the time for which he is entitled to pay during the month for which such report is made, and a statement of his actual necessary expenses incurred in the performance of his duties as such inspector, and the department shall certify the report to the county court before such compensation and expenses shall be paid.

(2) The county court shall supply the county and deputy county horticultural inspectors with such blanks, stationery, postage, equipment and clerical hire as are needed in the performance of their official duties.

570.035 Appeals from inspectors' decision. The department shall hear and promptly decide all appeals from the county or deputy county horticultural inspectors. Its decisions shall have full force and effect until set aside by the courts of the state. All appeals from inspectors to the department shall be under the form and regulations prescribed by the department.

570.040 Inspection where inspector unavailable. If any county for any reason fails to appoint a county horticultural inspector or if for any reason the inspector is not available, the nearest inspector available may perform such services, and his compensation and the necessary expenses incurred in the performance of his duty shall be charged against the county where the service is performed, as if he had been appointed by the county court of such county.

570.045 Assistance of employes of common carriers in locating horticultural articles; refusal or neglect is misdemeanor. All clerks, bookkeepers, express agents, railroad officials, employes, or employes of common carriers shall render to the department and its inspectors all assistance in their power in tracing, finding or discovering the presence of any article named in the horticultural laws. Any refusal or neglect on the part of said persons to render such friendly aid to assist in the carrying out of ORS 564.020, 570.005 to 570.055, 570.125, 570.320, 570.335 to 570.360 is a misdemeanor.

570.050 Cooperation of peace officers in enforcing quarantines. All peace officers in this state shall enforce all quarantine measures promulgated by the United States Department of Agriculture and the State Department of Agriculture.

570.055 Disposition of fines. All fines imposed under ORS 570.990 for violation of any of the provisions of ORS 570.010 to 570.050 shall, when collected, be paid to the treasurer of the county where imposed, to be placed in the current expense fund of such county and to be used to assist in defraying the expenses of horticultural inspection.

570.060 to 570.100 [Reserved for expansion]

INSPECTION AND QUARANTINE GENERALLY; ABATEMENT OF NUISANCES

570.105 Definitions for ORS 570.110 to 570.190. As used in ORS 570.110 to 570.190, unless the context requires otherwise, "nursery stock" includes all trees, shrubs, vines, plants, cuttings, grafts, scions, buds, fruit pits, nuts and other seeds of fruit, forest and ornamental trees and shrubs, both deciduous and evergreen, grown for sale or propagation or planting or collected in the wild, and all flowering bulbs, corms, roots, rooted herbaceous plants, or cuttings used or to be used for ornamental purposes, or cut greenery either cultivated or collected in the wild, used for ornamental purposes, but does not include cut flowers, or such cut greenery as ferns, and foliage grown under glass or other artificial covering.

570.110 Inspections and visitations by director and deputies. The director, and such officers, employes and deputies as he assigns to such duty, shall visit the different parts of the state and shall see that all regulations of the department and all provisions of law to prevent the introduction or spread of fruit pests and diseases of trees or plants injurious to the horticultural interests of the state are enforced. The director forthwith shall, upon the complaint of interested parties, inspect or cause to be inspected by some officer, employe or deputy of the department, orchards, nurseries and other places suspected to be infested with fruit pests or infected with diseases injurious to trees, plants or fruits.

570.115 Quarantine establishment; revocation. (1) If upon report of any officer, employe or deputy of the department, the director is of the opinion that any locality, district, orchard or place is infested with fruit pests or infected with disease injurious to trees, plants or fruits, and liable to spread to other orchards or localities to their damage or injury so as to be a public danger, the director shall, by an order entered in the records of the department, declare such place to be under quarantine. He shall give notice thereof by posting a notice in writing in a conspicuous place upon the premises, specifying with convenient certainty what place or premises are under quarantine regulations and by delivering a copy of such notice to the owner or person in charge of the premises, if he may be found thereon. Such place thereafter shall be subject to quarantine regulations of the department.

(2) As soon as, in the opinion of the director the danger from such quarantine locality has ceased, he may revoke the quarantine.

570.120 Quarantine powers exercised only in emergencies. The powers conferred in ORS 570.110 and 570.115 shall be exercised only in great and imminent danger to the fruit interests of the state and with utmost

caution and regard for the rights of individuals affected, consistent with the safety and welfare of the fruit interest of the whole state.

570.125 Inspector of outgoing shipments. (1) Upon request of any nurseryman or tree dealer doing business within this state, the director may deputize a suitable person to inspect outgoing shipments from such nurseryman or tree dealer. The nurseryman or tree dealer shall pay the person so deputized for his services while they are required by such nurseryman or tree dealer.

(2) In case the shipping business of any two or more nurserymen and tree dealers is not in the aggregate more than one person can inspect properly and such group makes satisfactory arrangements for payment of the person making such inspection, the director may deputize a person to inspect the shipment of all members of such group.

(3) No person deputized by the director to inspect outgoing shipments of nursery stock shall make any certificate concerning such shipments which is not true. No person so deputized shall allow a certificate of inspection given by him to be attached to any tree, shrub, vine, plant, scion, bud, or box, crate, bale, bundle or container of the same or of any of them unless he personally has inspected the articles and all of them immediately before signing such certificate, which must be dated in writing at the time it is signed.

(4) The director may revoke deputization of any such person at any time if he believes such person is not properly doing his duty.

570.130 Shipments marked to indicate place of origin; must be free from pests and disease. When any shipment of nursery stock, fruits, vegetables, seed, nuts or field crops are brought into this state or shipped within the state they must have attached to the container the required permits, tags or markings of the state of origin, and must be free of injurious insect pests and diseases or their eggs, larvae or pupae or other pests.

570.135 Premises may be entered for inspection. The officers, employes, deputies and inspectors of the department and the county horticultural inspectors and their deputies may enter at any time into any car, warehouse, depot, or upon any ship within the boundaries of this state, whether in the stream or at the dock, wharf, mole or any other place where such nursery stock or fruit or vegetables or seed or field crops or other such articles are received, or in which any of such articles are imported into the state, for the purpose of making the investigation or examination to ascertain whether such articles are infested with any injurious insects or their eggs, larvae or pupae or other plant pests or diseases.

570.140 Infested or infected shipment; notice to shipper. When any shipment of nursery stock, fruits, vegetables, seed, nuts or field crops are found upon inspection to be infested with injurious insect pests or diseases or their eggs, larvae or pupae or other plant pests, the inspector shall give notice to the shipper of the pests or diseases found and the manner of disposition, as provided for in ORS 570.145 to 570.165.

570.145 Procedure when infested or infected shipment can be separated. When, in the judgment of the inspector, materials not infested or infected can be separated from the infested or infected article without danger of escape from such article of the insects, their eggs, larvae or pupae, diseases or other plant pests and the owner, person, firm or corporation having control or possession of such articles desires to separate as instructed, the officer making the inspection shall give permission in writing to make such separation within a specified time and at the expense of the owner or responsible party who authorized the separation and under the supervision of such official or some person authorized by the inspector to exercise such supervision. Whenever the official who makes such inspection has other official work awaiting and it appears that the time required for separating and destroying such articles may exceed one hour, he may authorize and deputize some proper person to supervise the separation of the infested or infected articles from the uninfested or uninfected articles and the destruction of the infested and infected articles. The person so authorized shall be paid by the owner or the party who authorized the separation, or by both, for his services while supervising the separation and destruction of such articles.

570.150 Procedure when infested or infected shipment can be treated. When, in the judgment of the inspector, all or part of a shipment can be treated to exterminate the plant pests or diseases, the owner or his re-

sponsible agents shall be so notified. The notice shall include the exact method and materials to be used, and provide that all treatments shall be given under direct supervision of an authorized inspector and shall be done at the expense of the owner or the party who authorized such treatment or both.

570.155 Disposition of shipment when neither separated nor treated. (1) When no provision is made by the inspecting official for disposition by separation or treatment, the notice provided for in ORS 570.140 will require that all condemned materials be promptly shipped out of the state within a specified time, the limit of which shall be not less than 48 hours nor more than 10 days, according to the nature of the insects or diseases. The owner or person in charge thereof shall so ship such articles, but such shipment shall be made under the direction of the officer making the inspection and shall be at the expense of the owner or his agent.

(2) If the owner or his agent fails to comply with the notice, the articles shall be destroyed by the officer at the expense of the owner or his agent. In case the articles cannot be reshipped out of the state without danger of escape of the pest or disease to the orchards, vineyards, farms, gardens, ornamentals, and their products of Oregon, the articles shall immediately be destroyed by the inspecting official or the person who has inspected the same or under his direction.

570.160 Procedure when shipment is sound, but from an infected or infested area. In case the shipment, although apparently sound and not infested or infected by any pests, is from an infested or infected district beyond the limits of this state, the inspector shall notify the owner or person in charge thereof, and shall require such owner or person to fumigate or sterilize such shipment, or to destroy or to treat such shipment in the manner directed by the inspector and under his supervision or under the supervision of some person appointed by him for that purpose, or to return it to the point of origin or ship out of the state.

570.165 Service and sufficiency of notices provided for in ORS 570.140 to 570.165. Any notice required by ORS 570.140 to 570.165 shall be delivered in person or sent by mail to the owner or person in charge of such infested or infected articles at his or its last known place of address. Such notice mailed to the shipper or shippers of such chattels at the return address on any such shipment of infested or infected chattels shall be considered sufficient notice to the owner or owners thereof within the requirements of ORS 570.140 to 570.165.

570.170 Department to make inspections; infected or infested matter declared a public nuisance. The department, whenever it deems it necessary, shall cause an inspection to be made of any orchards, nurseries, trees, plants, vegetables, vines or field crops or any fruit packing house, storeroom, salesroom, or any other place or thing within this state. Any such places, orchards, nurseries, trees, plants, shrubs, vegetables, vines, fruit or field crops or articles found infested or infected with any insects, pests, diseases or fungous growth or noxious weeds, or the seeds thereof, injurious to fruits, plants, trees, vegetables or vines or grain, or other field crops, or with eggs or larvae liable to spread to other places or localities, or of such nature as to be a public danger, hereby are declared to be a public nuisance. The department shall notify in writing the record owner, or owners, of such articles, things or places that the same are so infested or infected.

570.175 Procedure for abatement of the public nuisance. (1) Whenever any public nuisance as described in ORS 570.170 exists at any place in the state on property of any owner upon whom notice has been served and who has failed or refused to abate such nuisance within the time and in the manner specified in such notice, or when any such nuisance exists on the property of a nonresident or on any property the owner of which cannot be served with notice in the manner provided in ORS 570.190, after diligent search within the county in which such nuisance exists, the department shall make a report to the district attorney of the county in which the nuisance exists, or if the nuisance exists on property which lies in two or more counties, to the district attorney of any of such counties, setting forth the description of the property upon which the nuisance exists and naming the pest or other condition which renders such property a nuisance. The district attorney shall prepare from such report and any

other available information a petition to the circuit court of his county, signed and verified in manner and form now required for a complaint in equity, in which the property or premises sought to be declared a nuisance shall be described with reasonable certainty. The petition shall set forth the names of each owner, encumbrancer or other person interested in such property or premises so far as the same can be ascertained from the public records, and pray that the court enter an order declaring such premises or property a public nuisance and directing the abatement of such nuisance by destruction or otherwise.

(2) Such suit shall be brought in the name of the State of Oregon by the Director of Agriculture in his official capacity and shall proceed as a suit in equity.

(3) Service of summons shall be made in the manner provided by law for service of summons in a suit in equity; provided, that where service is had by publication, the period of publication required shall be shortened to once a week for two consecutive weeks, and such service by publication is deemed complete upon the expiration of 21 days from and after the date of the first publication of such notice. The person or persons so served by publication shall appear and answer within 31 days from the date of the first publication of such notice.

(4) The court may, upon the application of any party, or upon its own motion, and for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected.

(5) At the time and place appointed for hearing the petition, or to which the hearing may have been adjourned, if the court has satisfactory proof that all parties interested in the property or premises have been duly served with notice as prescribed in this section, and further satisfied by competent proof that the conditions of such premises or property warrant its being declared a public nuisance, it shall enter an order condemning such property as a public nuisance and directing that the owner or other person ordered by the court shall destroy such property or abate such nuisance in such other manner as the court shall direct. If the nuisance is abated by any person other than the owner, then in the order of the court directing the abatement of the nuisance the court shall further order that an accurate account of the cost and expense necessary to the abatement be kept and a report made to the court within five days after the completion of the abatement of the nuisance. The report shall be in writing, verified by the one making it and shall be served and filed as a cost bill in a civil suit. Objections to the statement, if any, shall be made, served, filed and determined as objections to a cost bill in a civil suit. The decree which orders the abatement of a nuisance shall also provide that the owner or owners of the property upon which the nuisance exists pay the expense of abating the nuisance, that it shall be a judgment lien on the property prior to all other liens and, if not paid within 60 days after the statement of expense is filed, execution may issue.

570.180 Summary abatement of nuisance. Any authorized officer, employe or inspector of the department may, in any case where an urgent emergency exists, abate any public nuisance, as described in ORS 570.170, in a summary manner, doing as little damage as possible to the things or premises on which or in which such nuisance exists, with notice to the owner or owners sent by mail at or subsequent to the time of such abatement.

570.185 Application of ORS 570.170 to 570.180 limited. The provisions of ORS 570.170 to 570.180 shall not be construed to apply to shipments of infested or infected articles mentioned in ORS 570.135.

570.190 Notices; manner of service; persons authorized to make service; reputed owner considered owner. (1) All notices provided for in ORS 570.140 to 570.190 shall be served upon each owner of such infected or infested premises or chattel, or upon the owner of each, if such premises and chattel are under different ownership. Service shall be made in the following manner:

(a) If such owners are individuals and can with reasonable diligence be found within the county where such infested or infected premises or chattel are, it shall be served upon such owners, or at least one of them, personally, by delivering a copy thereof certified to by the officer making the inspection.

(b) If such owner is a corporation, by delivery of such certified copy to the president or other head of the corporation, secretary, cashier or managing agent, or in

case none of the officers of such corporation can with reasonable diligence be found within such county, then to any clerk or agent of such corporation who may with reasonable diligence be found within such county; or if no such officer is found, then by mailing such copy to the principal office of such corporation or to any person authorized to accept legal service for said corporation.

(c) If such owner is a minor under the age of 14 years, to such minor's father, mother or guardian; or, if none is found within such county, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

(d) If such owner is a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, on such guardian.

(e) If any such owner is a resident of such county and personal service of such notice cannot, with diligence, be had, it may be made on some person of the family, above the age of 14 years, at the dwelling-house or usual place of abode of the owner.

(f) In case such notice cannot with reasonable diligence be served as provided in this section, such notice shall be posted by any person qualified to make personal service thereof in a conspicuous place on the infected or infested premises, or on the premises or conveyance containing the infected or infested chattel.

(2) Such notice may be served by any representative of the department, or by a sheriff or his deputies. The notice shall state the spray to be used or the treatment to be applied for the eradication of insect pests, their eggs, larvae, and contagious diseases and fungous growths. The treatment may include the destruction of infested or infected articles, if such destruction is necessary in the judgment of the person inspecting the same under the authority conferred by law.

(3) For the purposes of ORS 570.130 to 570.190 any reputed owner shall be considered as the owner of any infected or infested premises or chattel.

570.195 [Repealed by 1961 c.394 §1 (ORS 570.196 enacted in lieu of ORS 570.195)]

570.196 Certain barberry varieties declared nuisances; cultivation prohibited; permitted varieties. (1) Barberry (berberis spp.), and plants of the genera mahonia, except mahonia aquifolium (Oregon grape), and mahoberberis including all species and varieties, except immune or resistant varieties thereof as provided by subsection (3) of this section, are hosts of puccinia graminis, the black stem rust fungus of wheat and other small grains and grasses, and hereby are declared to be public nuisances. Authorized representatives of the department or of the county in which such plants are located, shall abate these nuisances without indemnity to the owner as provided by ORS 570.200.

(2) No person shall grow, propagate, maintain, sell or transport within the State of Oregon, or bring into this state, any barberry (berberis spp.), and plants of the genera mahonia and mahoberberis including all species and varieties thereof, that have not been determined by the department to be immune to or resistant to the black stem rust fungus, puccinia graminis.

(3) The department shall establish and maintain a list by regulation of the varieties of barberry (berberis spp.), and plants of the genera mahonia and mahoberberis including all species and varieties, that have been determined to be immune to, or resistant to the black stem rust fungus, puccinia graminis. In promulgating regulations as authorized by this subsection, the department may take into consideration but is not to be limited to:

(a) The laws and regulations of the United States and other states.

(b) The opinions and advice of persons, agencies, or organizations recognized as experienced in the identification or control of barberry, mahonia and mahoberberis.

(c) Procedures necessary to control or eradicate such plants which are hosts of puccinia graminis, the black stem rust fungus, in order to prevent or eliminate substantial economic losses to the Oregon farmers and producers of small grains and grasses.

[1961 c.394 §2 (enacted in lieu of ORS 570.195)]

570.200 Procedure for abatement of nuisance caused by certain barberry varieties. (1) Authorized representatives of the department, county agents and weed control districts supervisors of each county shall detect, control and destroy or cause to be destroyed barberry (berberis spp.), and plants of the genera mahonia and mahoberberis including all species and varieties, that have not been determined as provided by subsection (3) of ORS 570.196 to be immune to, or resistant to the black stem rust fungus, puccinia graminis.

(2) Persons authorized by subsection (1) of this section shall forward a written notice to the owner, occupant or person in possession of the land on which such plant is located. Such notice shall contain:

(a) The name of the plant growing on such land and its approximate location.

(b) Concise description of the plant to be destroyed and the reasons such plants are declared to be a public nuisance.

(c) A statement that such plant must be destroyed within 20 days from the date of notice and only in a manner and as directed by the department by regulation.

(3) Each person owning or in possession of a plant ordered to be destroyed as provided by subsection (2) of this section, shall destroy such plant within the time and manner set out in such order.

(4) If the owner, person in possession or the occupant of land on which such plant is located fails or refuses to destroy the plant as provided by order under subsection (2) of this section, the department or the county may go upon such land and destroy the plant without indemnity to the owner thereof.
[1961 c.394 §4]

570.205 to 570.300 [Reserved for expansion]

PROTECTIVE MEASURES AGAINST SPREAD OF DISEASE AND PESTS

570.305 Department officials to prevent introduction of pests and diseases. The director, and the chief of the division of plant industry, are authorized and directed to use such methods as may be necessary to prevent the introduction into the state of dangerous insect pests and plant diseases, and to apply methods necessary to prevent the spread, and to establish control and accomplish the eradication of such pests and diseases, which may seriously endanger agricultural and horticultural interests of the state, which may be established or may be introduced, whenever in their opinion such control or eradication is possible and practicable.

570.310 Cooperation with interested groups and agencies. (1) The director, and the chief of the division of plant industry, may cooperate with any group of citizens, municipalities and counties in the state, Oregon State University, the extension service, the Secretary of Agriculture of the United States, and such agencies as he designates to carry out the provisions of this section and ORS 570.305.

(2) The director, acting by and through the chief of the division of plant industry, may in his discretion, provide funds, labor, materials and supplies for the purposes of this section and ORS 570.305.

570.315 [Reserved for expansion]

570.320 Horticultural inspectors to prevent introduction of diseased matter into state. It is the special duty of all officers, employes and deputies to whom the duty to act as horticultural inspectors is assigned, to inspect nursery stock, trees, shrubs, plants, fruits, bulbs and vegetables and other articles mentioned in ORS 570.320 to 570.330, coming from points within the state, and to enforce the provisions of ORS 570.320 to 570.330 and all other horticultural laws of the state relating thereto. Any such officer, employe or deputy of the department also shall have all the duties, powers and rights of a county horticultural inspector and are granted jurisdiction to act throughout the state.

570.325 Collaboration with federal department. The officers, employes and inspectors of the department and county inspectors are authorized to collaborate with the United States Department of Agriculture in all matters relating to the inspection of nursery stock, plants, fruits, vegetables, bulbs, seeds or other plant products shipped into this state from foreign countries or from other states or territories.

570.330 Containers and wrappers to be labeled. Each carload, case, box, package, crate, bundle, or bale of trees, shrubs, plants, vines, cuttings, grafts, scions, buds, fruit pits, fruit or vegetables imported or brought into this state shall have plainly and legibly marked thereon in a conspicuous manner and place, the name and address of the person, firm or corporation shipping the same and the name and address of the consignee; also the name of the country, state or territory where the contents were grown and must show that it contains nursery stock, seedlings or seeds.

570.335 Prunings and cuttings to be burned. No person, firm or corporation owning or operating any nursery, fruit orchard of any kind, hopyards, flower gardens or ornamental trees shall throw any cuttings or prunings or parts of any fruit trees, nursery stock, ornamental trees, or hop

vines into any public road, highway, lane, field or other inclosure, or into any watercourse of any kind; but shall destroy such cuttings or prunings or parts with fire within a reasonable time, except when infested or infected with a contagious pest or disease. Such infested or infected prunings, cuttings or parts shall immediately be destroyed by fire.

570.340 [Reserved for expansion]

570.345 Spraying or destroying infested or infected matter; notice; "infested" and "infected" defined. (1) Any person, firm or corporation owning or operating any nursery, fruit orchard, hopyard, flower garden or ornamental trees, and knowing it to be infested or infected with any kind of insect pest or disease that is or may become a menace to horticultural or farm crops, or on being served with a written notice by the department that such nursery, fruit orchard, hopyard, flower garden or ornamental trees are so infested or infected, shall immediately spray or destroy the same in such manner as the department directs.

(2) (a) "Infested" means when the adult, egg, or larvae form of the insect is found in such numbers as, in the opinion of the department, to be a menace to horticultural or farm crops.

(b) "Infected" means any appearance of a disease on such trees or plants that may be a menace to horticultural or farm crops.

570.350 Traffic in infested fruit prohibited; seizure; failure of owner to show fruit; sale to canneries and factories permitted. (1) No person, firm or corporation shall import into this state or transport within this state or sell or offer for sale by displaying in stores, in or at fruit stands, or along public highways or in any other manner within this state fruit of any kind which is infested with any insect pest or is infested with any disease. The fact that any fruit bears the marks of scale, insects or is worm eaten, or bears the marks of a disease in excess of tolerances permitted by the department is prima facie evidence that the fruit is infested or infected within the meaning of this section.

(2) When an inspector, or other authorized person of the department, making an inspection of fruit finds that such fruit does not meet the requirements of this section or of other sections of the law relating to such fruit, he shall place a seizure on such fruit and immediately serve notice in writing of such seizure upon the owner or person having possession. The owner or person having possession shall not sell or dispose of the seized fruit or move the seized fruit from the place of location provided for in the notice of seizure without written permission from the inspector so to do. The failure of the person in possession of the seized fruit to show such fruit in possession, or a written release signed by a proper person authorized by the department so to do, is prima facie evidence that the owner or person having possession of such fruit at time of seizure has violated the provisions of this section.

(3) In addition to the penalties provided for in ORS 570.990, fruit seized for violation of this section shall be disposed of by court order or by consent of the owner or person in possession; or when the infestation is such as to cause immediate danger of spread of pests or diseases to orchard and farm crops growing from or on the soil of Oregon, such fruit or fruits immediately shall be destroyed by the inspector making the seizure or by other persons authorized by the department, by burning or by other means that will completely eradicate the pest or disease, and without compensation to the owner, agent or person in possession of such fruit, where it appears beyond a reasonable doubt that the infestation is such as will cause immediate spread of pests or diseases. Such infested or infected fruit may be sold to evaporators, fruit canneries, fruit product factories, or other by-product factories under the following conditions:

(a) Fruit so sold shall be used solely for the production of manufactured fruit products, beverages or other manufactured products or by-products.

(b) The nature of the infestation or infection is not such as to make the article of food or beverage manufactured from such fruit unhealthful or unfit for use as a food or beverage.

(c) The sale of such fruit shall be subject to such grades and regulations as the department adopts.

570.355 Packing or delivery for shipment of infected fruit is misdemeanor; manufacture into by-product permitted. Each person who packs or prepares for shipment to any point within the state, or who delivers or causes to be delivered to any express

agent or railroad agent or other person or to any transportation company or corporation for shipment to any point without the state, any fresh, cured or dried fruit infected with insect pests or diseases injurious to trees, shrubs, plants, fruits or vegetables is guilty of a misdemeanor. This section does not prevent the grower of such infected fruit grown within this state from manufacturing the same into a by-product or selling and shipping the same to a by-product factory.

570.360 Department to present evidence of violations; prosecution in justice court. The department shall present evidence of violation of any provision of ORS 564.020, 570.005 to 570.055, 570.125, 570.320, 570.335 to 570.355, 616.545 and 616.550 to the district attorney for the county in which any such violation may occur. Prosecution for such violation may be brought in any of the justice courts of this state.

570.365 Proceeds from fines; use. All fines imposed under ORS 570.990 for violation of any of the provisions of ORS 570.335 to 570.360, when collected, shall be paid to the treasurer of the county where imposed, to be placed in the current expense fund of such county and used to assist in defraying the expenses of horticultural inspectors.

570.370 Fumigatorium established; purpose. In order to carry on investigations of insect pests of nursery, greenhouse, bulb, fruit, vegetable, cereal, seed and other agricultural industries and to experiment with and determine effective measures for the control of such insect pests by means of fumigation and to collaborate with the department in its regulatory program, there is provided a fumigatorium at Oregon State University at Corvallis.

570.375 Management and control of fumigatorium. The fumigatorium shall be under the management and control of the State Board of Higher Education through its director of the agricultural experiment station.

570.380 to 570.400 [Reserved for expansion]

CONTROL AREAS

570.405 Department may establish control areas; limitations. (1) The department may establish, in accordance with the provisions governing the procedure for the declaring of quarantines contained in ORS 561.510 to 561.590, control areas within this state, if after careful investigation it determines that such areas are necessary for the general protection of the horticultural, agricultural or forest industries of the state from diseases, insects, animals or noxious weeds or for the eradication or exclusion from such areas of certain plants or their produce, trees, diseases, animals, insects or noxious weeds that may be a menace to such areas and generally to horticultural, agricultural or forestry industries.

(2) The power and authority to establish such control areas and for the eradication or exclusion of certain plants or their produce, trees, diseases, insects, animals or noxious weeds existing therein or to be excluded therefrom shall be exercised reasonably and justly considering the exigencies of the particular situation, the danger to the interests sought to be protected and the immediate and continuing effect upon the property and the owners of the property in the areas established. Such powers shall in no case be exercised unreasonably, unjustly or arbitrarily.

(3) The department in such determination shall define the boundaries of the areas and specify the character and kinds of plants or their produce, trees, diseases, insects, animals or noxious weeds to be eradicated or excluded and the manner and method of such eradication or exclusion. The provisions of ORS 561.510 to 561.590 apply to this section.

570.410 Violation of order prohibited. From and after the date an order creating a control area becomes finally effective, no person shall violate, in whole or in part, any provision of such order.

570.412 Making contracts and receiving funds to carry out control order. The department is authorized to contract with and to receive funds from any person, including but not limited to, any governmental agency, county or municipal corporation, for the purpose of carrying on such work as is necessary in enforcing or carrying out the provisions of a control order. Any unexpended funds paid into the department as provided by this section may be returned to such person, governmental agency, county or municipal corporation. Funds received under this section shall be deposited with the State Treasurer, credited to the Department of

Agriculture Account, and shall not be subject to the provisions of ORS 293.145 and 293.155. Such funds are continuously appropriated for the purpose of carrying out the purpose of the contract and the control area order under which the money is paid. [1959 c.300 §2]

570.415 Revocation of control area order. The director may, at any time he believes such action necessary, revoke any order concerning control areas made by him by giving notice in a newspaper published within or near the control area or lands affected and filing proof thereof with the county clerk of the county.

570.420 Cherry fruit fly control area inspector; appointment; duty; pay. The county court or board of county commissioners of each county in which a control area, or any part thereof, has been established for cherry fruit fly control according to ORS 570.405, shall appoint a control area inspector for that county upon the petition of 50 interested persons or 50 percent of the interested persons, whichever is smaller, who are farm owners within the county. The inspector shall work under the direction of and be responsible to the department. He shall carry out the provisions of the control area order. He shall be paid out of the general funds of the county such wages as are fixed by the county court or board of county commissioners.

570.425 Inspector has access to land in area; refusal to comply with control area order. (1) The control area inspector has access to the land within the control area that is within the county for which he was appointed.

(2) In the event an owner or occupant of any land fails or refuses to treat the trees, plants or their produce as provided by the control area order, the inspector shall at once notify the appointing authority of such fact and they shall authorize the inspector and such assistants as he may employ to go upon the land or premises and treat the trees, plants or their produce thereon. The most effective and practical method as approved by the director shall be used.

570.430 Procedure for collection of expenses incurred by inspector. (1) On the completion of the work, the inspector shall file with the county clerk an itemized statement of expenses necessarily incurred in the operation, including his own wages for time spent therein, both on the preparation and completion of the operation, verified by his oath. When such statement is filed, the county clerk shall cause the same to be entered upon a lien docket prepared for that purpose. The amount of the expenses when so docketed shall constitute a first lien upon such land and premises, except as to taxes. The county court or board of county commissioners shall hear and promptly decide any objection to the amount of expenses assessed.

(2) If the expenses are not paid and the lien discharged by the owner or occupant of the lands within 90 days from the date the lien is docketed, the county clerk shall certify the same to the tax collector of the county, who shall extend the amount thereof upon the current tax roll and when so extended the same shall constitute a valid lien against the land and premises and shall be collected by the tax collector in the same manner that taxes are collected; provided that all liens so certified by the county clerk to the tax collector after July 20 of each year, and before October 31 of the same year, shall be extended on the tax roll of the following year.

570.435 Expenses to be paid by county. If no objection has been filed, as authorized in ORS 570.430, within 10 days from the date of filing and docketing the lien, the county court or board of county commissioners shall pay out of the general funds of the county to the persons to whom the expenses are owing the amount thereof.

570.440 to 570.500 [Reserved for expansion]

WEED CONTROL

570.505 Necessity of eradication of weeds; cooperation in control and eradication. Noxious weeds have become so thoroughly established and are spreading so rapidly on state, county and federally owned lands, as well as on property in individual ownership and in transition to county ownership through tax delinquency, that they hereby are declared a menace to the public welfare. While it is recognized that complete eradication is not immediately practicable, it hereby is established that steps leading to eradication and control are necessary and that responsibility rests not only on the individual landowner and operator but also on the county, state and Federal Government,

and that the county, state and Federal Government should cooperate with individual owners in the control and eradication of noxious weed pests.

570.510 State and counties to control noxious weeds. The state and the respective counties shall control white top, Russian knapweed and any other weed or weeds designated as noxious in accordance with ORS 570.515 to 570.575 in any such county on land under their respective ownerships.

570.515 County court may declare county a weed control district; petition for special weed control district. (1) The county court of each county may declare the county a weed control district for the purpose of destroying such weeds and of preventing the seeding and spread of such other weeds and plants as the court may for the purposes of ORS 570.515 to 570.575 declare noxious.

(2) If the county is not made a weed control district or if the county weed control district does not include all such weeds or plants desired as included as noxious, interested parties may present a petition for a special weed control district. Upon presentation of such petition, describing the area to be included, naming the noxious weeds or plants to be destroyed and those to be prevented from blooming and producing seed within said district, bearing the signatures of not less than seven farm owners constituting a majority of farm owners in said described area, the county court shall declare such area a special weed control district and such weeds noxious within the district, in accordance with the petition.

570.520 Weed inspectors; appointment; duties; compensation. (1) The court shall, upon declaring a weed control district, appoint a weed inspector or inspectors, whose duty it shall be to find out if any noxious weeds or plants are being permitted to grow and produce bloom or seed within the district or districts contrary to the provisions of ORS 570.515 to 570.575, to serve notices and when necessary to destroy or cut or to supervise the destruction or cutting of the noxious weeds growing or seeding within the weed control district.

(2) The person or persons appointed by the county court shall receive for their services reasonable wages, as determined by the county court, for the time actually employed in the performance of duty under ORS 570.515 to 570.575.

570.525 Notice of district creation and weeds to be controlled. The county court shall, upon declaring a weed control district or districts, cause to be published an official notice describing each district and naming weeds to be destroyed and to be prevented from producing seed within the districts. The notice shall be published in a newspaper or newspapers, not exceeding three in number, serving the districts, in two consecutive issues if weekly, or two times at intervals of one week if daily or semiweekly. Immediately after the last publication of the official notice, the provisions of ORS 570.515 to 570.575 shall be enforced.

570.530 Weed inspector has right of entry; service of notice to eradicate weeds. (1) The weed inspector shall have access to the land within the district.

(2) When the provisions of ORS 570.515 to 570.575 are not being complied with, the weed inspector shall serve a written notice to the owner or occupant of the land. When the weed inspector is unable to serve such notice personally, he shall post the notice and two copies thereof in three conspicuous places on the land. Such notice shall contain:

(a) The date of service or posting of notice.

(b) The name of the weed or weeds growing on such land, and a statement setting forth that such weeds must be destroyed or must be prevented from producing seed within a specified time of not less than two days or more than 20 days, to be established by the inspector, from the date of service of such notice.

(3) The service of such notice as provided in this section shall have the effect to require the owner or occupant of such land to destroy or prevent such weeds from seeding or spreading during the continuation of his ownership or occupancy of the land or until the district is dissolved. A copy of such notice, together with proof of service indorsed thereon, shall be filed with the county court.

570.535 Owner or occupant to eradicate weeds; disposition of fines. (1) Each person, firm or corporation owning or occupying land within the district shall destroy or prevent the seeding on such land of any noxious weed within the meaning of ORS 570.515 to 570.575 in accordance with the declaration of the county court and by the use of the best means at hand and within

a time declared reasonable and set by the court, except that no weed declared noxious shall be permitted to produce seed.

(2) All moneys collected as fines for violation of ORS 570.515 to 570.575 in any county shall be paid into the county treasury and shall become a part of the weed control fund.

570.540 Eradication of weeds on public lands and rights of way. The State Highway Commission, the respective county courts, reclamation districts and municipalities shall destroy or prevent the spread or seeding of any noxious weed within the meaning of ORS 570.515 to 570.575 on any land owned by them or constituting the right of way for any highway, county road, drainage or irrigation ditch, power or transmission line, or other purposes under their respective jurisdictions.

570.545 Eradication of weeds when owner or occupant refuses to do so; request for quarantine; statement of expenses to be filed. (1) If the owner or occupant of the land fails or refuses to immediately destroy or cut the noxious weeds in accordance with ORS 570.515 to 570.575, the weed inspector shall at once notify the district attorney of the county who shall at once take necessary steps for enforcement of ORS 570.515 to 570.575. The county court shall authorize the weed inspector or such assistants as he may employ to go upon the land or premises and destroy the noxious weeds or control them in such manner as will destroy all seeds of such noxious weeds; provided, however, that if destruction or control of the weeds on any farm is in the judgment of the county weed inspector impracticable because the weeds may be too far advanced, or if for any other reason the means of control available are unsatisfactory, he shall so notify the county court, which shall request the department to immediately quarantine any such uncontrolled noxious weed infested farm within the county to prevent the movement of infested crops or of livestock from such farm except under conditions prescribed in the quarantine that will prevent spread of the weeds by such crops or livestock. In all cases where the inspector undertakes to destroy or control noxious weeds, the most effective and practical method, in the judgment of the inspector, and with least injury to the land or crops, shall be used.

(2) Upon the completion of such work the person so appointed and authorized by the county court shall file with the county clerk an itemized statement of the expenses necessarily incurred in the destruction of such weeds, including his own wages as provided in ORS 570.520, verified by his oath.

570.550 Statement to be entered on lien docket; certification to tax collector if not paid. When the statement of expenses is filed, the county clerk shall cause it to be entered upon a lien docket prepared for that purpose. The amount of the charges and expenses when so docketed shall constitute a first lien upon such lands or premises, except as to taxes. If the charges and expenses are not paid and the lien discharged by the owner or occupant of such lands within 90 days from the date the lien is docketed, the county clerk shall certify the same to the tax collector of such county, who shall extend the amount thereof upon the current tax rolls. When so extended, the same shall constitute a valid lien against such premises and shall be collected by the tax collector in the same manner as taxes are collected. All liens so certified by the county clerk to the tax collector after September 1 of each year shall be extended on the next roll delivered to the tax collector under ORS 311.115.

[Amended by 1957 c.99 §1]

570.555 Payment for work. If within 10 days from the date of filing and docketing the lien as provided in ORS 570.545 and 570.550, no objections have been filed thereto, the county court shall pay to the person or persons appointed by the court, as provided in subsection (1) of ORS 570.520, out of the general funds of the county, the amount of such lien.

570.560 County tax for weed control fund; expenditure. (1) The county courts of the several counties of this state hereby are required to levy a tax and create a fund to be known as the weed control fund for the control of weeds on county highways and public lands and for cooperation with individuals, state and federal agencies in controlling noxious weeds within weed control districts. The amount estimated by the county court as being sufficient for such purposes may be placed in the county budget and after consideration at the meeting held for the purpose of passing upon the tax levy by the voters of the county, may become one

of the items for which expenditure may be made during the ensuing year.

(2) When such a fund is created, it shall be expended under the supervision of the county court in such manner as to effectuate the purposes of ORS 570.515 to 570.575.

570.565 Dissolution of weed control district; disposition of funds. If in the judgment of the court the enforcement of ORS 570.515 to 570.575 in any county which has been declared a weed control district seems impracticable or likely to work injury to the people of the district, it may after a hearing declare that such weed control district no longer exists. Any special weed control district shall be declared terminated by the county court when a majority of landowners in the district, by petition or by public hearing state that they desire such district terminated for any weeds declared noxious in the district. Any moneys remaining in any fund for weed control shall, after the termination of the district, be credited to the general fund of the county.

570.570 Duty to clean machinery before moving; weed infested residue not to be moved. No person operating or having control of any threshing machinery, clover huller, hay baler, seed cleaning or treating machinery or other machinery shall move said machinery over any public road or from one farm to another without first thoroughly cleaning it. Before moving it, all hay or bundle racks and all other equipment shall be thoroughly swept and cleaned. All hay, straw or other crop residue infested with noxious weeds under the meaning of ORS 570.515 to 570.575 having partially or fully formed seeds shall not be moved from the land on which grown to other lands not infested with any of the weeds in the field from which such crop material came.

570.575 Copy of statute to be posted on machinery; copies furnished by county clerk. (1) No person shall operate any threshing machine, clover huller or hay baler, seed cleaning or treating machinery or any other similar machinery within any duly created weed control district in this state without first having posted in a conspicuous place on such machinery a copy of ORS 570.570 and 570.575.

(2) The county clerks of the various counties of this state hereby are authorized and directed to have printed a sufficient number of copies of ORS 570.570 and 570.575 and shall deliver such copies upon request to owners or operators of such machinery.

570.580 to 570.985 [Reserved for expansion]

PENALTIES

570.990 Penalties. Violation of ORS 570.010 to 570.050, 570.105 to 570.200, 570.320 to 570.360, 570.410 and 570.515 to 570.575 is punishable, upon conviction, by a fine not to exceed $100.

[Amended by 1955 c.166 §1; 1961 c.394 §5]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1961

Sam R. Haley
Legislative Counsel