

Chapter 571

1963 REPLACEMENT PART

Nurseries and Nurserymen

571.005	Definitions	571.145	Inspection of licensed nurseries; additional inspections and special services; fees
571.015	Department to maintain nursery service; duties	571.160	General prohibition
571.025	State Nursery Advisory Committee	571.170	Substitution or transportation of unsuspected nursery stock prohibited
571.035	Department to promulgate list of nursery stock	571.180	Misrepresentation of nursery stock by grower, dealer or agent prohibited; tag or label required on fruit trees; nursery stock as horticultural product
571.045	Application of licensing requirements	571.190	Knowingly selling, advertising or displaying damaged, misrepresented or mislabeled nursery stock prohibited
571.055	License required to grow or deal in nursery stock; false representations or statements regarding licenses	571.200	Knowingly selling, moving or storing infected or infested nursery stock prohibited; seizure
571.065	Annual license fees; additional and past-due fees	571.210	Hold order on defective nursery stock, condemnation
571.075	Renewal of license; penalty fee	571.220	Imported nursery stock to bear certificate of origin; contents
571.085	Growers and dealers to make additional payments	571.230	Disposition and use of receipts other than additional payments under ORS 571.085
571.095	Form of license	571.240	Disposition and use of additional payments under ORS 571.085
571.105	Agents' licenses	571.991	Penalties
571.115	License not transferable; moving place of business		
571.125	Suspension, revocation or refusal of license		
571.135	Issuance of shipping permit numbers		

CROSS REFERENCES

Agricultural chemicals, control of, Ch. 183	
Cancellation of uncollectible debts owed to department, 561.270	
Landscape architects, registration, 671.320	
Wild flower protection, Ch. 564	
571.160	571.180
Packing, grading and standardization, Ch. 616	False representations in selling tubers, seeds or plants, 633.651
Shipments from outside the state must be tagged with the required tags and permits of the state of origin, 570.130	Inspector appointed for outgoing shipments upon request of nurserymen, 570.125
	Sale or transportation of certain wildflowers prohibited, 564.020
	571.230
	Department of Agriculture Account, 561.150
	Expenditures without allotment prohibited in certain cases, 291.238

571.005 Definitions. Unless the context requires otherwise, as used in ORS 571.005 to 571.240:

(1) "Agent" means any person only soliciting orders in this state for the purchase or sale of nursery stock for any principal who is not licensed under this chapter.

(2) "Dealer":

(a) Means any person who deals in, sells, handles, consigns or accepts on consignment, imports, stores, displays or advertises nursery stock which he has not grown.

(b) Does not mean a person whose business is located out of state and who imports and sells such nursery stock not grown in Oregon into this state and who only solicits such nursery stock sales through salesmen or representatives or by mail or advertisement. Such person to be exempt as a dealer must not own, lease, control or maintain buildings, warehouses or any location or place in Oregon in which or through which such nursery stock is stored, sold, offered for sale or held for sale or delivered therefrom. The nursery stock must be shipped direct from the out-of-state location or place of business to the grower, wholesaler, retailer or ultimate consumer or user in Oregon.

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

(4) "Grower" means any person who grows nursery stock.

(5) "Nursery stock" includes all botanically classified plants or any part thereof, such as floral stock, herbaceous plants, bulbs, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees and shrubs, berry plants, and all trees, shrubs and vines and plants collected in the wild that are grown or kept for propagation or sale. "Nursery stock" does not include:

(a) Field and forage crops.

(b) The seeds of grasses, cereal grains, vegetable crops and flowers.

(c) The bulbs and tubers of vegetable crops.

(d) Any vegetable or fruit used for food or feed.

(6) "Person" includes but is not limited to each branch store or place of business in which or at which the business of the dealer or grower is conducted and each member of a cooperative association.

(7) "Sell" or "sale" means to offer, expose or hold for sale, have for the purpose of

sale, or to solicit orders for sale, or to deliver, distribute, exchange, furnish or supply.

[1963 c.461 §1]

571.010 [Repealed by 1963 c.461 §34]

571.015 Department to maintain nursery service; duties. (1) A nursery service shall be maintained within the department for the purpose of carrying out and enforcing the provisions of ORS 564.040, 564.991, 571.005 to 571.240 and 571.991.

(2) The department is authorized to:

(a) Inspect the nursery stock of growers, dealers and other persons and places of business provided for under ORS 564.040, 564.991, 571.005 to 571.240 and 571.991.

(b) Issue certificates and permits and check the license and licensing of persons affected by ORS 564.040, 564.991, 571.005 to 571.240 and 571.991.

(c) Investigate violations of ORS 564.040, 564.991, 571.005 to 571.240 and 571.991.

(d) Disseminate information among growers relative to treatment of nursery stock for both prevention and elimination of attacks by plant pests and diseases.

(e) Carry out any other duties or responsibilities which are of service to the nursery industry or which may be necessary for the protection thereof.

[1953 c.461 §4]

571.020 [Repealed by 1963 c.461 §34]

571.025 State Nursery Advisory Committee. (1) In order that there may be the closest contact between the department and the problems of the nursery industry, there hereby is created a State Nursery Advisory Committee which shall consist of nine members appointed by the Director of Agriculture. The director, as far as practicable, shall make appointments so that all segments of the nursery industry are represented on the committee.

(2) The members first appointed shall determine by lot the length of their terms: Three to serve for one year, three to serve for two years and three to serve for three years, each term beginning on July 1, 1963. Thereafter the term of each member shall be for three years, beginning on July 1 of the year of appointment. A member shall continue to serve until a successor is appointed and qualifies. Vacancies in office shall be filled by appointment for the unexpired term.

(3) The members of the committee shall be paid \$10 per diem while actually engaged

in the business of the committee, including necessary travel time, and their subsistence and actual traveling expenses from funds provided by ORS 571.230.

(4) The functions of the committee shall be to advise and counsel with the department in the administration of ORS 564.040, 564.991, 571.005 to 571.240 and 571.991.

(5) The committee shall meet at the call of the chairman or the director of the State Department of Agriculture. A majority of the members present at any meeting shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the committee.

(6) At the first meeting after July 1 in each year the committee shall select a chairman. The Dean of the School of Agriculture, Oregon State University, and the Director of the State Department of Agriculture, or their representatives, shall be ex officio members without the right to vote.

[1963 c.461 §3]

571.030 [Repealed by 1963 c.461 §34]

571.035 Department to promulgate list of nursery stock. The department shall as authorized by ORS chapter 183 establish and maintain a list of cut greenery which shall be nursery stock and subject to the provisions of ORS 564.040, 564.991, 571.005 to 571.240 and 571.991. All other cut greenery shall be exempt from the provisions of ORS 564.040, 564.991, 571.005 to 571.240 and 571.991.

[1963 c.461 §2]

571.040 [Repealed by 1963 c.461 §34]

571.045 Application of licensing requirements. Subsection (1) of ORS 571.055, ORS 571.065 and 571.085 do not apply to any person when total sales of nursery stock do not exceed \$50 during a fiscal year and such nursery stock is not advertised for sale by the use of signboards, placards, public communications media, newspapers, business letterhead stationery or other circulating medium. The provisions of ORS 564.040, 564.991, 571.005 to 571.240 and 571.991 apply at any time the sales of nursery stock exceed \$50 during a fiscal year.

[1963 c.461 §15]

571.050 [Repealed by 1963 c.461 §34]

571.055 License required to grow or deal in nursery stock; false representations or statements regarding licenses. (1) No person, without first obtaining a license from the department, shall:

(a) Operate as a grower, dealer or agent.

(b) Advertise or display nursery stock for sale on any stand, market stall, store or other place of business.

(c) Advertise nursery stock for sale by the use of signboards, placards, public communications media, newspapers, business letterhead stationery or other circulating medium.

(d) Transport, move, store or warehouse nursery stock grown or held for sale. However, this paragraph does not apply to common carriers.

(2) No person shall:

(a) Falsely represent that he is a licensed grower, dealer or agent.

(b) Wilfully make a false statement when making an application for a license.

[1963 c.461 §§5, 9]

571.060 [Repealed by 1963 c.461 §34]

571.065 Annual license fees; additional and past-due fees. (1) Every grower:

(a) Who grows during a fiscal year one-fourth acre or less of nursery stock shall pay a license fee of \$15.

(b) Who grows during a fiscal year in excess of one-fourth acre but not in excess of one-half acre of nursery stock shall pay a license fee of \$22.50.

(c) Who grows during a fiscal year in excess of one-half acre of nursery stock shall pay a license fee of \$27.50 and shall pay the further sum of \$1.50 for each acre, or portion thereof, in excess of one acre. The total of the grower's license and acreage fees shall not exceed \$100.

(2) Each grower shall be entitled to one sales location under a grower's license. For each additional sales yard, branch store, market stall, peddling vehicle or sales location which he maintains in excess of the one permitted under his original grower's license the grower shall pay an additional license fee of \$12.50. Every grower who is also a dealer shall be licensed only as a grower.

(3) Every dealer for each fiscal year shall pay a separate license fee of \$17.50 for each sales yard, branch store, market stall, peddling vehicle or sales location.

(4) Every agent for each fiscal year shall pay a license fee of \$12.50. A separate license shall be required for each principal that the agent represents.

(5) After a grower or dealer has been issued a license, if during the same fiscal year there is an increase in his acreage, or if new

sales outlets or places subject to licensing are opened or made a part of his operation, such grower or dealer shall pay the department the additional license fees or acreage fees, as required by this section and ORS 571.085, for the remainder of the fiscal year.

(6) Every grower, dealer or agent who operates without payment of applicable license or acreage fees for the prior fiscal year is required to pay all such fees which are past due before the department may issue a license for the current fiscal year. If a current license has been issued, it shall automatically be suspended until all past-due fees are paid.

[1963 c.461 §6]

571.070 [Repealed by 1963 c.461 §34]

571.075 Renewal of license; penalty fee.

(1) The fees for the renewal of the annual licenses listed in ORS 571.065 shall be paid before July 1 of each year.

(2) Failure to pay the renewal license fee when it is due forfeits the right to operate as a grower, dealer or agent.

(3) Any person who has been previously licensed to grow or sell nursery stock and whose right to grow or sell has been forfeited shall not be issued a renewal license except upon written application to the department accompanied by a sum of money equal to the regular license fee, as provided in ORS 571.065, plus a penalty equal to 25 percent of such license fee and the acreage fees due; but in no case shall the penalty be more than \$25.

(4) No penalty fee shall be required of any person whose application for renewal of a license is accompanied by his signed statement that prior to his application he has not operated as a grower, dealer or agent in the previous 12 months or since the expiration date of his last license, whichever time is less.

[1963 c.461 §12]

571.080 [Repealed by 1963 c.461 §34]

571.085 Growers and dealers to make additional payments. (1) When paying his license fee, every dealer and grower shall pay annually to the department a sum of money equal to 10 percent of his annual license fee.

(2) In addition, each grower shall pay annually to the department the further sum of \$1.50 an acre for each acre of nursery stock grown by him. The total of the grower's license and acreage fees under this sec-

tion shall not exceed the total of the grower's fees paid under subsection (1) of ORS 571.065.

(3) The payments required by this section are a part of the license fee. No license shall be issued or renewed until the payments are made.

[1963 c.461 §13]

571.090 [Repealed by 1963 c.461 §34]

571.095 Form of license. All licenses issued under ORS 571.005 to 571.240 shall:

(1) Include the date of issue.

(2) Expire on June 30, next following the date of issue, unless sooner revoked by the department.

(3) Be in the form of a certificate.

(4) Be numbered serially under the direction of the department.

(5) Be posted in a conspicuous place on the premises of the licensee where they can be easily seen by the general public.

[1963 c.461 §10]

571.100 [Repealed by 1963 c.461 §34]

571.105 Agents' licenses. (1) No agent's license shall be issued or valid unless the agent's principal has given the department written authorization to issue the license.

(2) An agent's license shall be automatically suspended during any period when he is not acting as an agent or the principal has withdrawn or canceled the authorization.

(3) If his license has not expired, an agent may revive his license by giving notice to the department that he is again acting as an agent. If the agent represents a principal other than the one who gave written authorization to issue the license, subsection (1) of this section applies.

[1963 c.461 §8]

571.110 [Repealed by 1963 c.461 §34]

571.115 License not transferable; moving place of business. (1) A license is personal to the applicant and may not be transferred. A new license is necessary if the business entity of the licensee is changed or if the membership of a partnership is changed, irrespective of whether or not the business name is changed.

(2) The license issued to a grower or dealer applies to the particular premises named in the license. However, if prior approval is obtained from the department, the place of business may be moved to other premises or location without the necessity of relicensing.

[1963 c.461 §7]

571.120 [Repealed by 1963 c.461 §34]

571.125 Suspension, revocation or refusal of license. The department may, as provided in ORS chapter 183, suspend, revoke or refuse to issue or renew the license of any person when it is satisfied that:

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

(2) The licensee was guilty of fraud, deception or misrepresentation in the procurement of a license.

(3) The licensee has violated any provision of ORS 564.040, 564.991, 571.005 to 571.240 and 571.991.

[1963 c.461 §11]

571.130 [Repealed by 1963 c.461 §34]

571.135 Issuance of shipping permit numbers. (1) The department may issue a shipping permit number to any licensee who requests or requires one. Such number shall be the same as the license number and so designated on the license.

(2) When authorized or required by the department, the shipping permit number shall accompany all shipments and deliveries of nursery stock.

[1963 c.461 §16]

571.140 [Repealed by 1963 c.461 §34]

571.145 Inspection of licensed nurseries; additional inspections and special services; fees. (1) The department shall inspect each licensed nursery at least two times each fiscal year.

(2) When requested by the licensee, the department may make additional inspections and special services, and inspections necessary for the issuance of phytosanitary certificates, for a fee to be paid by the licensee. Such additional inspections and special services are in addition to normal inspections as provided by subsection (1) of this section. The fees shall be established by the department after a public hearing and in accordance with ORS 616.445 and ORS chapter 183. Notwithstanding the provisions of this subsection, each licensee shall be entitled to five phytosanitary certificates without cost during the license period.

(3) The provisions of subsections (1) and (2) of this section do not restrict or prohibit the department from the requirement that it must inspect any nursery stock as often as necessary to make general certifications as to the health and cleanliness of

such stock and to enforce and carry out the provisions of ORS 564.040, 564.991, 571.005 to 571.240 and 571.991.

[1963 c.461 §17]

571.150 [Repealed by 1963 c.461 §34]

571.160 General prohibition. No person, individually or acting for another person, such as an official or employe acting for a corporation, shall violate ORS 564.040, 564.991, 571.005 to 571.240 and 571.991.

[1963 c.461 §27]

571.170 Substitution or transportation of uninspected nursery stock prohibited. No person shall:

(1) Substitute other nursery stock for nursery stock covered by an inspection certificate.

(2) Transport or accept for transportation nursery stock that does not carry the official inspection tag authorized by the department.

[1963 c.461 §18]

571.180 Misrepresentation of nursery stock by grower, dealer or agent prohibited; tag or label required on fruit trees; nursery stock as horticultural product. (1) No grower, dealer or agent shall:

(a) Sell nursery stock representing it to be a name, age or variety different from what the nursery stock actually is.

(b) Represent that any nursery stock is a new variety, when in fact it is a standard variety and has been given a new name.

(c) Sell or represent cormels as corms or bulblets as bulbs.

(2) In addition to the provisions of ORS 616.405 to 616.545, all other laws relating to labeling and the provisions of subsection (1) of this section, the grower, dealer or agent shall attach to every bundle of fruit-bearing trees sold or shipped within this state a tag or label specifying the name of the variety of trees contained therein. If the bundle shall contain trees of different varieties, such label or tag shall be attached to each tree or group of trees of the same variety. The purchaser of any fruit-bearing tree or trees not true to name as specified on such tag or label, shall have a remedy at law in a civil action to recover the damages sustained. Such action may be brought at any time prior to the third bearing year.

(3) "Horticultural products" as defined in ORS 616.405 and 616.505 includes nursery stock.

[1963 c.461 §19]

571.190 Knowingly selling, advertising or displaying damaged, misrepresented or mislabeled nursery stock prohibited. No person shall knowingly offer to sell, advertise or display nursery stock:

(1) That is dead, in a dying condition, seriously broken, desiccated, frozen or damaged by freezing, or materially damaged in any way.

(2) By any methods which have the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, name, age, variety, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect.

(3) That fails to meet the grade with which it is labeled.

(4) By making other false or fraudulent representations in connection with the sale of nursery stock.

[1963 c.461 §20]

571.200 Knowingly selling, moving or storing infected or infested nursery stock prohibited; seizure. (1) (a) No person shall knowingly offer to sell nursery stock that is infected or infested.

(b) Unless the nursery stock is held for separation or treatment under the supervision of an officer, employe or inspector of the department, no person shall advertise, display, transport, move, store or warehouse nursery stock that is infected or infested.

(c) Any infected or infested nursery stock may be seized in accordance with the procedures provided for in ORS 561.605 to 561.630.

(2) As used in subsection (1) of this section:

(a) "Infected" means any appearance of a disease symptom or casual agent that may, in the opinion of the department, be a menace to other nursery stock or any products or properties.

(b) "Infested" means when the mature or immature form of any plant pest, including noxious weeds as defined by the department, is found in such numbers as, in the opinion of the department, to be a menace to other nursery stock or any product or properties.

[1963 c.461 §§21, 22]

571.210 Hold order on defective nursery stock; condemnation. (1) When the department has cause to presume that any nursery stock will not perform in a normal manner, the officials, employes or inspectors of the department may issue a hold order for a period not to exceed 10 days. No person shall sell or dispose of in any manner such nursery stock within the 10-day period without written permission from the department.

(2) If a person displays or sells nursery stock that is dead, in a dying condition, seriously broken, frozen or damaged by freezing or materially damaged in any way, any officer, employe or inspector of the department may condemn such nursery stock and order it destroyed.

[1963 c.461 §23]

571.220 Imported nursery stock to bear certificate of origin; contents. Nursery stock imported into Oregon must be accompanied by a certificate from the place of origin, signed by an authorized agent or representative of the agency supervising and responsible for carrying out the nursery stock laws of such originating state or country. The certificates shall contain additional information as may be required by the department to carry out and enforce the provisions of ORS 564.040, 564.991, 571.005 to 571.240 and 571.991.

[1963 c.461 §24]

571.230 Disposition and use of receipts other than additional payments under ORS 571.085. Except as provided in ORS 571.240, the department shall deposit all fees and moneys paid to it under ORS 564.040, 564.991, 571.005 to 571.240 and 571.991 in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such account is continuously appropriated to the department for the purpose of administering and enforcing ORS 564.040, 564.991, 571.005 to 571.240 and 571.991.

[1963 c.461 §25]

571.240 Disposition and use of additional payments under ORS 571.085. (1) All moneys received and collected by the department under ORS 571.085 shall be deposited in the Department of Agriculture Account and shall be used by the department pursuant to agreements entered into between the department and the Dean of Agriculture of Oregon State University with the advice of the State Nursery Advisory Committee. Such

moneys are not subject at any time to ORS 293.145 to 293.155.

(2) Such moneys hereby are appropriated for the use of the Dean of Agriculture of Oregon State University in carrying on experimental and research projects and investigations agreed upon by him and the department and directed toward the prevention and elimination of plant diseases, insect pests and the development and improvement

of cultural methods that are beneficial to the nursery industry.

[1963 c.461 §14]

571.250 to 571.980 [Reserved for expansion]

571.990 [Repealed by 1963 c.461 §34]

571.991 Penalties. Violation of ORS 571.005 to 571.240 or regulations promulgated thereunder is punishable, upon conviction, by a fine of not more than \$500.

[1963 c.461 §32]

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, 1963.

Sam R. Haley
Legislative Counsel