# Chapter 571

## 1979 REPLACEMENT PART

# Nurseries and Nurserymen


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**571.005 Definitions.** Unless the context requires otherwise, as used in ORS 571.005 to 571.230:

(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.

(e) Cut flowers, unless stems or other portions thereof are intended for propagation.

(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; 1977 c.638 §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**571.010** [Repealed by 1963 c 461 §34]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 571.230 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 571.230 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 571.230 and 571.991.

(c) Investigate violations of ORS 564.040, 564.991, 571.005 to 571.230 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 eligible for compensation and expenses as provided in ORS 292.495, to be paid 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 571.230 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, 1967 c 208 §3; 1979 c.309 §1]

**571.030** [Repealed by 1963 c.461 §34]

**571.035 Department to promulgate list of nursery stock.** The department shall as authorized by ORS 183.310 to 183.500 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 571.230 and 571.991. All other cut greenery shall be exempt from the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991. [1963 c.461 §2]

**571.040** [Repealed by 1963 c.461 §34]

**571.045 Exemption from licensing requirements.** Subsection (1) of ORS 571.055 and ORS 571.057 do not apply to any person whose business consists only of retail sales to the ultimate consumer and the total of such sales of nursery stock does not exceed $250 during a fiscal year. The provisions of ORS 564.040, 564.991 and this chapter apply at any time the sales of nursery stock exceed $250 during a fiscal year. [1963 c.461 §15; 1971 c 756 §1, 1975 c.110 §1; 1977 c.638 §2]

**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]

**571.057 License application; contents; fee.** (1) Each person required to be licensed by ORS 571.055 shall make application for such license or for renewal thereof, on a form furnished by the department which shall contain:

(a) The name and address of the applicant; the number of locations to be operated by the applicant and the addresses thereof; and the assumed business name of the applicant;

(b) If other than an individual, a statement whether such person is a partnership, corporation or other organization;

(c) The gross dollar volume of sales by the applicant of nursery stock within Oregon during the prior calendar year, or if the applicant maintains sales records on a fiscal basis, the prior fiscal year; and

(d) The type of business to be operated and, if applicant is an agent, the principals he represents.

(2) Each application for license shall be accompanied by a license fee as provided for by this section, the fees for additional inspections and special services provided for in ORS 571.145 and any amounts required by subsection (3) of ORS 571.075. Such application shall not be a public record but shall be subject to audit and review by the department. An applicant for an original license or for a renewal license, without a full calendar year of prior nursery stock sales experience upon which to base the fees, shall base such fees on an estimated annual gross dollar volume of sales of nursery stock. Notwithstanding the provisions of ORS 571.075, upon application by such

person for a renewal of license for a subsequent year, the fees for the previous license year shall be adjusted to reflect the actual annual gross dollar volume of sales of nursery stock by such applicant. Any additional fees found to be due shall be paid to the department at the time of application for renewal of license, or the department shall refund any overpayment found to be due the applicant.

(3) (a) The license fees for growers and dealers shall be established by the department, after public hearing in accordance with ORS 183.310 to 183.500. Such fees shall be established on the basis of annual gross dollar volume of sales of nursery stock within Oregon for the calendar year immediately preceding the license period.

(b) The license fees shall not be less than $40 nor more than $500. The fees shall be established in such amount, when taken together with fees for inspections and special services, as shall be sufficient to allow the department to administer and enforce the provisions of this chapter and ORS 564.040 and 564.991 and to maintain an emergency fund with an unencumbered balance not to exceed the cost of administration and enforcement of such provisions during a representative four-month period.

(4) Each grower or dealer shall be entitled to one sales location under his license. Each additional sales location, yard, branch store, stall or peddling vehicle maintained by such person shall require the payment of the full license fee for each of such additional sales outlets. A grower who is also a dealer shall be licensed only as a grower.

(5) Each agent shall pay a license fee of $25 for each principal that the agent represents. [1971 c.756 §6, 1977 c.638 §3]

**571.060** [Repealed by 1963 c.461 §34]

**571.063 Temporary nursery sale license; application; fee; conditions.** (1) Upon payment of a fee of $5, a temporary nursery sale license may be issued by the department for the holding of a nursery stock sale conducted by, or for the benefit of, a duly registered nonprofit organization, where such sale does not exceed seven consecutive days.

(2) Application for a temporary nursery sale license shall be made on a form furnished by the department, and shall be accompanied by the license fee. A separate application and license fee is required for each sale.

(3) The department may prescribe the conditions of such temporary nursery sales license, which conditions shall be stated in the license. Any such license may be revoked or suspended by the department for violation of any of the conditions stated therein. This chapter shall not be applicable to such temporary nursery sales except as provided in this section. [1971 c.756 §8]

**571.065** [1963 c 463 §6; repealed by 1971 c.756 §9]

**571.070** [Repealed by 1963 c.461 §34]

**571.075 Renewal of license.** (1) The fees for the renewal of the annual licenses and the fees for inspections and special services required by this chapter shall be paid with the application for license renewal and before July 1 of each year.

(2) Failure to pay the fees when 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 571.057. [1963 c.461 §12, 1971 c.756 §2; 1977 c.638 §4]

**571.080** [Repealed by 1963 c.461 §34]

**571.085** [1963 c.461 §13; repealed by 1971 c.756 §9]

**571.090** [Repealed by 1963 c.461 §34]

**571.095 Form of license; display required.** All licenses issued under this chapter 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 and a copy at each location where the licensee is doing business, where they can be easily seen by the general public. A duplicate copy of the license shall be issued by the department for each sales location of the licensee. [1963 c.461 §10, 1971 c.756 §3]

**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 183.310 to 183.500, 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 571.230 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 and unlicensed nurseries; additional inspections and special services; fees.** (1) The department shall inspect each licensed nursery at least once each fiscal year and as often thereafter as the department considers necessary to determine and control pest, disease and noxious weed conditions.

(2) 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.

(3) In addition to the fees required for issuance or renewal of a license, an applicant who requires additional inspections and special services shall submit at the time of each such application a fee for such additional inspections and special services to be performed by the department during the license period. The department shall establish a schedule of fees for such inspections and special services, based on an applicant's total gross dollar volume of nursery stock sales during the previous license year, in an amount that is reasonably necessary to recover all costs incurred by the department in the performance of such inspections and special services. However, the fee shall not exceed three mills per dollar of sales.

(4) The department may establish a schedule of fees for nursery stock inspections and special services which may be performed by the department for persons who are not required to obtain a license pursuant to this chapter. The fees shall be established in such amounts as are reasonably necessary to recover all costs incurred by the department in the performance of such inspections and special services. Payment for such inspections and special services shall be made to the department at the time the inspections or special services are performed. [1963 c.461 §17; 1977 c.638 §5]

**571.147 Authority of department to audit books and records of licensees; suspension of license for failure to submit to**

**audit.** (1) The department is authorized to audit the books and records of applicants or licensees, as it deems necessary, in order to insure compliance with ORS 571.057. Such audit may be made at the applicant's or licensee's place of business during normal business hours, upon three days' notice from the department.

(2) Notwithstanding the provisions of ORS 183.310 to 183.500, failure by a licensee to allow such audit shall automatically suspend his license until the audit is performed and any additional fee and penalty found to be due is paid to the department. [1971 c.756 §7]

**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 571.230 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 632.450 to 632.490 and 632.900 to 632.985, 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 632.450 and 632.900 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 571.230 and 571.991. [1963 c 461 §24]

**571.230 Disposition and use of moneys received.** (1) Except for fees paid under ORS 571.057, 571.063 and subsections (3) and (4) of ORS 571.145, the department shall deposit all fees paid to it under this chapter in the General Fund in the State Treasury to the credit of the Department of Agriculture Account. Such fees are continuously appropriated to the department for the purpose of administering and enforcing ORS 564.040, 564.991 and this chapter. The fees paid to the department under ORS 571.057, 571.063 and subsection (3) or (4) of ORS 571.145 shall be deposited by the State Treasurer in the Department of Agriculture Service Fund, and such funds are continuously appropriated to the department for the purposes of administering and enforcing this chapter.

(2) An amount not to exceed 25 percent of the fees and moneys referred to in subsection (1) of this section 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, for the purposes set forth in subsection (3) of this section.

(3) The amounts provided for in subsection (2) of this section shall be used by 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 §25; 1971 c.756 §4; 1979 c.499 §5]

**571.240** [1963 c.461 §14; 1967 c.637 §12; repealed by 1971 c.756 §9]

**571.990** [Repealed by 1963 c.461 §34]

**571.991 Penalties.** Violation of ORS 571.005 to 571.230 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, Thomas G. Clifford, 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,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel