Chapter 586

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Warehouses; Grain Inspection

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DEFINITIONS

586.210 Definitions. As used in ORS 586.210 to 586.730, unless the context requires otherwise:

(1) "Certified alfalfa seed" means alfalfa seed that has been certified by Oregon State University as authorized in ORS 633.511 to 633.750.

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

(3) "Grain" means wheat, corn, oats, barley, rye, flaxseed, certified alfalfa seed, soybeans, grain sorghum, dry beans and peas and any other grain for which standards are established by the state or the Federal Government.

(4) "Handling" includes receiving and loading out grain tendered for storage.

(5) "Public terminal warehouse" means any public warehouse located in a city of this state designated as an inspection point by the department.

(6) "Public warehouse" includes any elevator, mill, warehouse or other structure in which grain is received from one or more members of the public for storage or handling for compensation.

(7) "Warehouseman" includes any person, existing legal entity or municipality owning, operating or controlling any public warehouse. [Amended by 1955 c.731 §1; 1959 c 195 §1; 1961 c 445 §1; 1967 c.492 §1; 1969 c 190 §1]

586.220 [Repealed by 1955 c.731 §34]

PUBLIC WAREHOUSES

586.225 Exemption for certain warehousing facilities. (1) The provisions of ORS 586.210 to 586.561 do not apply to any public warehouse or other facility where the owner or operator thereof only receives grain:

(a) The owner or operator has purchased or has agreed to purchase,

(b) For processing or cleaning for the owner of the grain,

(c) For such purposes other than storage or handling as the department may by rule prescribe,

if the records of the owner or operator include such written evidence as the department requires, furnished on or before delivery of the grain by the owner or the authorized agent of the owner, clearly showing that the grain was left or deposited for one or more of the purposes set forth in this subsection.

(2) Grain left or deposited with an owner or operator whose records do not clearly include the evidence showing such grain was only left or deposited for one or more purposes as required by subsection (1) of this section, must be considered by the department to be grain deposited for storage and handling pursuant to ORS 586.210 to 586.561. Such owner or operator and the warehouse or other facility of the owner or operator where grain is received, are subject to all provisions of ORS 586.210 to 586.561 during the license period. [1969 c.190 §2b]

Note: 586.225 was enacted into law by the Legislative Assembly but was not added to or made a part of 586 210 to 586.730 but was added to and made a part of 586.210 to 586.300 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

586.230 State Department of Agriculture to inspect warehouses and records and to enforce ORS 586.210 to 586.730. (1) The department shall have the power to inspect public warehouses. The department shall investigate all complaints of fraud or injustice in the operation of public warehouses and the business practices of warehousemen licensed by the department and make all necessary rules and regulations for carrying out and enforcing the provisions of ORS 586.210 to 586.730.

(2) The department shall have the right to inspect at reasonable times any warehouse or storage facility where grain is stored, handled or received and any records kept by the owner or person in control of such warehouse or storage facility and pertaining to the operation thereof, in order to determine whether or not such facility should be licensed pursuant to this chapter. [Amended by 1955 c.731 §2; 1959 c.195 §2; 1961 c.445 §2]

586.240 [Repealed by 1955 c 731 §34]

586.250 Improper acts of department officers or employees and of others improperly influencing them. (1) No officer, employee, inspector, sampler or weigher of the department shall:

(a) Be guilty of any neglect of duty.

(b) Knowingly or carelessly inspect, sample or weigh any grain, grain products, hay or other commodities improperly.

(c) Directly or indirectly accept any money or other consideration for any neglect of duty or any improper performance of duty as such officer, employee, inspector, sampler or weigher.

(2) No person shall improperly influence or attempt to improperly influence any officer, employee, inspector, sampler or weigher of the department in the performance of duties as such officer, employee, inspector, sampler or weigher.

586.260 [Repealed by 1955 c.731 §34]

586.270 Warehouse licenses; federal licenses; license application and fee. (1) Every person operating any public warehouse in this state shall, before July 1 of each year, procure from the department a license for each such warehouse so operated for the ensuing year, before transacting business at such public warehouse; but the holder of a license to store grain under the United States Warehouse Act shall furnish the department with a copy of such license and bond and, having furnished such copies, is not required to secure a state license or pay state warehouse inspection fees during the time the license holder continues to operate under the federal license. The license shall be posted in a conspicuous place in the office of each warehouse.

(2) Application for a license under this section shall be made to the department upon forms furnished by it. The application shall include:

(a) The name and address of the applicant.

(b) The location of each public warehouse of the applicant.

(c) The total rated storage capacity in bushels of each public warehouse.

(d) The tariff schedule of charges to be made at each public warehouse for the handling, storage and shipment of grain during the license year.

(e) Such other information as the department deems necessary to carry out the purposes of ORS 586.210 to 586.730.

(3) The applicant shall submit with the application an annual license fee of $500 for each public warehouse.

(4) In addition to the license fee required by subsection (3) of this section, every applicant who handles or stores certified alfalfa seed shall pay a fee not to exceed $75, as determined by the department after public hearing in accordance with the provisions of ORS 183.310 to 183.550, to reimburse the department for the additional administrative expense involved in applying ORS 586.210 to 586.730 to a warehouseman who handles or stores certified alfalfa seed.

(5) The department shall issue a license to the applicant if it finds that the application is in due form and the applicant has complied with the provisions of ORS 586.210 to 586.730. [Amended by 1955 c.731 §3; 1967 c 492 §2; 1969 c.190 §2, 1981 c.204 §1]

586.275 Revocation of or refusal to issue license. Subject to the provisions of ORS 183.310 to 183.550, upon determining that any person licensed under this chapter, or who has applied for a license under ORS 586.270, has violated or failed to comply with any of the provisions of this chapter or any of the rules and regulations of the department made under this chapter, or that such person has failed to place and keep the premises, where the person conducts the licensed business, in the manner required under this chapter, the department may revoke such person's license or refuse to issue a license to such person. [1957 c.11 §2; 1961 c 425 §6; 1961 c 445 §5; 1971 c.734 §89]

586.280 Prohibition against operating a warehouse or issuing a warehouse receipt without a license. (1) No person operating a public warehouse within this state shall issue any negotiable grain warehouse receipt for grain for storage purposes unless the person is at the time licensed so to do, either by the department or by the United States Department of Agriculture.

(2) No person shall operate a public warehouse in this state without a license under ORS 586.210 to 586.730. [Amended by 1955 c 731 §4]

586.285 Operation without a license may be enjoined. The department may apply for, and the circuit courts of this state hereby are vested with jurisdiction to issue, a temporary or permanent injunction against the operation by any person of a public warehouse without a license if such license is required by ORS 586.210 to 586.730. The remedy conferred by this section is in addition to any other remedy provided by law. [1955 c 731 §8 (enacted in lieu of 586 320); 1971 c 418 §17]

586.290 Posting of signs at warehouses. (1) Every warehouseman operating a public warehouse licensed and bonded under ORS 586.210 to 586.730 shall post at or near the main entrance to the warehouse a sign to be furnished by the department of such design as the department directs, having thereon the words, "Oregon Bonded Grain Warehouse." It is unlawful to permit such sign or any sign of similar appearance or bearing the same words, or words of similar import, to remain during any time that the warehouse is not duly and regularly licensed or bonded under ORS 586.210 to 586.730.

(2) When any such license expires or is revoked and a new license from the department has not yet been issued, or if the full amount of the bond required has not been filed and approved, then the warehouseman immediately shall:

(a) Remove the sign.

(b) Discontinue operation of the business as a public warehouse.

(c) Place and maintain for at least one year at the main entrance to the warehouse a sign of such dimensions and other specifications as prescribed by the department and having thereon the words, "This is Not a Licensed or Bonded Grain Warehouse." [Amended by 1955 c.731 §5, 1959 c 195 §3]

586.295 Warehouse to be maintained in adequate manner. A public warehouse shall be maintained in a manner adequate to provide suitable, sanitary and safe storage of the particular product or commodity stored therein. [1957 c.11 §6, 1957 c.314 §4]

586.300 Warehousemen's bond; liability; automatic license suspension for failure to have bond. (1) Each warehouseman operating a public warehouse required to be licensed under ORS 586.210 to 586.730 shall, on or before July 1 of each year, give a bond to the State of Oregon executed by the warehouseman as principal and by a corporate surety licensed to do business in this state as surety, in such sum of not less than $5,000 nor more than $200,000 as conforms with a schedule to be established by the department. Such schedule shall be based upon a number of cents, varying from 8 to 15, multiplied by the number of bushels of rated grain storage capacity of the public warehouse furnishing the bond. The department shall determine the rate between 8 and 15 cents and fix the amount of the bond with reference to the market value of the commodity found or expected by the warehouseman to preponderate in storage in the warehouse of the warehouseman. In so doing, the department shall take into consideration, but not be limited by, the coverage requirements of lending agencies. The bond of a public warehouse when first licensed shall conform with the value of commodities expected in storage.

(2) The bond must be approved by the department and shall be conditioned upon faithful performance by the warehouseman of the acts and duties enjoined by law upon the warehouseman as a warehouseman, and such further obligations as a warehouseman as the warehouseman may lawfully assume under contracts with depositors of grain in the warehouse of the warehouseman. The liability of the surety upon such bond is limited to the amount specified in the bond.

(3) The warehouseman may give a single bond meeting the requirements of ORS 586.210 to 586.730, and all public warehouses operated by the warehouseman shall be deemed as one public warehouse for the purpose of the bond required under such sections.

(4) If a bond has been filed with, and approved by, the Department of Agriculture of the United States, as required by the United States Warehouse Act, then such bond shall be considered as in lieu of the bond required by this section, if:

(a) Satisfactory proof of the filing and approval of the bond is filed with the department;

(b) The department is satisfied with the form of the bond;

(c) The surety is a corporation authorized to do business as a surety in this state; and

(d) The bond meets the other requirements of ORS 586.210 to 586.730.

(5) The department may require the filing of an additional bond or bonds, within the limit stated in subsection (1) of this section, when it has knowledge of the principal's methods of conducting business or of conditions affecting such business that, in the department's judgment, make such increase advisable for the protection of holders of the bonded public warehouse's receipts or load slips.

(6) Notwithstanding ORS 183.310 to 183.550, the license of a warehouseman shall be automatically suspended for failure at any time to have or to maintain a bond in the amount and type required by this chapter. The department shall not remove the suspension or issue a license as the case may be, until it is satisfied the required bond has been obtained. [Amended by 1955 c 731 §6; 1959 c.195 §4; 1961 c 445 §8]

586.310 [Repealed by 1961 c.445 §23]

586.315 Warehouseman required to insure grain or retain written waiver by depositor. (1) Except as provided in subsection (2) of this section, grain in storage in a public warehouse or public terminal warehouse shall be kept fully insured by the warehouseman for the current market value of such grain against loss by fire, lightning, inherent explosion, windstorm, cyclone and tornado. Evidence of such insurance coverage in the form of a certificate of insurance approved by the department shall be filed with the department at the time of making application for an annual license to operate a public warehouse as required by this chapter. The department shall not issue a license until such certificate of insurance is received.

(2) Any person depositing or storing grain who does not wish to have the grain of the person insured by a warehouseman, as required by subsection (1) of this section, may relieve the warehouseman of that duty and the provisions of this section, by notifying the warehouseman in writing that the person does not wish the grain of the person insured. If such notice specifies a definite period during which such grain shall not be insured, the warehouseman shall keep such notice in the files of the warehouseman for at least two years after such period ends. If no period is mentioned and the notice covers all grain which has been or may thereafter be deposited or stored with such warehouseman, then the warehouseman shall retain such notice for at least two years after all grain has been removed by the person giving such notice.

(3) Notwithstanding the provisions of ORS 586.275, when the provisions of this section are violated, the department shall immediately suspend the license of the warehouseman. The suspension shall remain in effect until there has been compliance with this section. The provisions of this subsection shall supersede any inconsistent provisions in ORS 183.310 to 183.550. [1959 c 195 §6; 1961 c 425 §7]

586.320 [Repealed by 1955 c.731 §§7, 34 (586.285 enacted in lieu of 586 320)]

586.330 Investigating and fixing warehouse charges. All charges made by any warehouseman subject to the provisions of ORS 586:210 to 586.730, for the handling or storage of grain shall be just, fair and reasonable; and the department, upon the complaint of any person interested or by inquiry upon its own motion, after a full hearing, may:

(1) Declare any existing charge for the handling or storage of grain or any regulation whatsoever affecting such charge, or the receipt, handling or storage, to be unreasonable or unjust; and

(2) Declare and order what is a just and reasonable charge or regulation to be imposed or enforced in place of that found to be unreasonable or unjust. [Amended by 1955 c 731 §9]

586.340 Posting rate schedules; increase or discrimination in rates prohibited. Every warehouseman shall annually, during the first week in July, publish by posting in a conspicuous place in the public warehouse of the warehouseman, a schedule of grain storage and handling rates for the ensuing year. The schedule shall be kept posted in a conspicuous place in the public warehouse. The rates shall not be changed during such year. No discrimination in rates shall be made by any warehouseman. [Amended by 1955 c 731 §10]

586.350 Overcharges, rebates and preferences prohibited. No warehouseman subject to the provisions of ORS 586.210 to 586.730 shall:

(1) Directly or indirectly, by any special charge, rebate, drawback or other device, demand, collect or receive from any person a greater or lesser compensation for any service rendered or to be rendered in the handling or storage of grain than the warehouseman demands, collects or receives from any other person for doing for the person a like and contemporaneous service in the handling or storage of grain under substantially similar circumstances or conditions.

(2) Make or give any undue or unreasonable preference or advantage to any person in any respect whatsoever.

(3) Subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [Amended by 1955 c 731 §11]

586.360 Warehouseman required to receive grain for storage; load slips; warehouse receipts. (1) Every warehouseman shall receive for storage and handling, as the capacity of the public warehouse of the warehouseman will permit, all grain in a public warehouse licensed for such purpose, in suitable condition for storage, tendered the warehouseman in the usual course of business, without discrimination of any kind.

(2) Every warehouseman receiving grain for storage or handling shall issue to every person delivering the grain to the warehouseman a load slip which shall contain thereon the actual weight of each draft of the grain and the tare, if any, and other information required by the department, immediately upon receipt of each load or parcel of grain. The warehouseman receiving grain for storage or handling shall within 10 days after demand, issue and deliver to the owner of the grain, or the representative of the owner, a negotiable or nonnegotiable grain warehouse receipt in form prescribed by the department, unless exempted by ORS 586.380 (3). [Amended by 1955 c 731 §12, 1961 c 445 §9]

586.370 Obtaining blank forms of receipts from department. (1) The department shall cause to be printed, bound and delivered to each person operating a public warehouse a sufficient number of blank negotiable and nonnegotiable grain warehouse receipts, in such form and as prescribed by the department, required to carry on the business of such public warehouse when needed. No person shall use such forms for

any purpose other than in connection with receipt of grain for storage or handling.

(2) Every person intending to operate a public warehouse shall file with the department for that purpose a requisition for such number of negotiable and nonnegotiable grain warehouse receipts as may be required for the operation of such public warehouse during the ensuing license year, specifying:

(a) The name of the warehouseman intending to operate such public warehouse.

(b) The state number of the public warehouse, or the respective numbers of the public warehouses, intended to be operated.

(c) The respective quantities of blank forms of receipts required for each public warehouse.

(d) The place where each public warehouse, respectively, is located.

(e) The location of the principal place of business of the warehouseman operating such public warehouse or warehouses.

(f) The rate of handling and storage charges at such public warehouse, or each of such warehouses, respectively.

(g) Such other information as may be required by the department, specified in the blank form of requisition.

(3) All receipt forms shall state thereon the amount of cash or other advances made by the warehouseman to the depositor of grain.

(4) Payment for such receipts shall be made in advance. Every such warehouseman may file requisitions for additional receipts from time to time as the warehouseman requires. [Amended by 1955 c.731 §13, 1961 c.445 §10]

586.380 Only authorized receipts to be used; exception. (1) It is unlawful to issue negotiable or nonnegotiable grain warehouse receipts other than those furnished by the department and such receipts shall be issued consecutively as numbered and dated with the true and correct date on which each receipt is actually issued. It is unlawful to print or have in possession for the purpose of issuance under ORS 586.210 to 586.730, any negotiable or nonnegotiable grain warehouse receipt blanks intended for use under the provisions of those sections other than those authorized to be printed or other than those furnished by the department.

(2) Nothing in ORS 586.210 to 586.730 shall be construed to prevent the issuance of nonnegotiable load slips or other nonnegotiable evidence of similar nature showing when and what quantities of grain were received or the condition thereof upon delivery.

(3) Warehouses operated under the United States Warehouse Act, are exempted from the use of receipts furnished by the department. [Amended by 1955 c.731 §14, 1961 c.445 §11, 1969 c 190 §7]

586.382 Warehouse records; warehouse receipts. (1) A warehouseman operating another business in conjunction with, or in proximity to, the licensed public warehouse of the warehouseman shall keep a complete set of records for the warehouse business, entirely separate and distinct from the accounts and records of any other business. Deposits of grain for the account of such other business, or for grain owned by the warehouseman, shall be entered in the books of the warehouse in the same manner as those of other depositors.

(2) No sale of grain by a warehouseman for future delivery, made when grain is not in storage in the warehouse, shall be deemed a transaction to which this chapter is applicable, nor shall such transaction be entered in the warehouse records as a storage obligation until the grain is placed in the public warehouse. When such grain is received and deposited to an account of a purchaser, the warehouseman shall immediately issue and deliver to the purchaser a negotiable or nonnegotiable warehouse receipt therefor.

(3) When grain in storage, not covered by an outstanding warehouse receipt, is purchased from one depositor and title passed to a new owner, the warehouseman shall immediately issue and deliver to such new owner a negotiable or nonnegotiable warehouse receipt therefor. [1961 c.445 §7]

586.385 Warehouseman's liability for failure to issue proper receipt. (1) No warehouseman shall issue a receipt for grain not known by the warehouseman to be in the public warehouse of the warehouseman.

(2) When partial withdrawal of the grain of the depositor is made by a depositor, the warehouseman shall make appropriate notation thereof on the depositor's nonnegotiable receipt and on other records as prescribed by the department, or, if the warehouseman has theretofore issued a negotiable receipt to the depositor, the warehouseman shall claim, cancel and replace it with a negotiable receipt showing the amount of such depositor's grain remaining in the public warehouse.

(3) A nonnegotiable receipt shall have plainly lettered upon the face thereof, "Not Negotiable" or "Nonnegotiable."

(4) For failure of the warehouseman to claim and cancel, on delivery by grain stored in the public warehouse of the warehouseman, a negotiable receipt therefor issued by the warehouseman, the negotiation of which would transfer the right to possession of such grain, a warehouseman shall be liable to any one who purchases such receipt for

value and in good faith, for failure to deliver to the purchaser all the grain specified in the receipt, whether such purchaser acquired title to the negotiable receipt before or after delivery of any part of the grain by the warehouseman. [1961 c.445 §13]

586.390 [Repealed by 1955 c.731 §34]

586.395 Warehouseman's liability for injury to grain; disposal of grain which is a hazard. (1) A warehouseman shall be liable for any loss or injury to the grain in the public warehouse of the warehouseman caused by the failure of the warehouseman to exercise such care in regard to it as a reasonably careful person would exercise in regard to similar grain of the person's own.

(2)(a) If a warehouseman discovers that as a result of a quality or condition of certain grain placed in the public warehouse of the warehouseman, of which the warehouseman had no notice at the time of deposit, such grain is a hazard to other grain or to persons or to the public warehouse, and if it is not immediately removed by the owners at the request of the warehouseman, the warehouseman may sell the grain at public or private sale without advertisement but with reasonable notification to all persons known to claim an interest in the grain. If the warehouseman after a reasonable effort is unable to sell the grain, the warehouseman may dispose of it in any other lawful manner and shall incur no liability by reason of such disposition.

(b) At any time prior to sale or disposition as authorized in this section, the warehouseman shall deliver the grain to any person entitled to it, upon proper demand and payment of charges.

(c) From the proceeds of sale or other disposition of the grain the warehouseman may satisfy the charges of the warehouseman for which otherwise the warehouseman would have a lien, and shall hold the balance thereof for delivery on the demand of any person to whom the warehouseman would have been required to deliver the grain. [1961 c 445 §14]

586.400 Duty of warehouseman receiving grain for storage; damages for failure to deliver. (1) Except as otherwise provided in subsection (2) of this section, the duty of a warehouseman receiving grain for storage or shipment in a public warehouse operated by the warehouseman shall be governed by the provisions of ORS 77.4030.

(2) A warehouseman's duty to deliver grain is fulfilled if delivery is made to the several owners in the order of demand as rapidly as it can be done by ordinary diligence; where delivery is made within 48 hours after facilities for receiving the grain are provided, such delivery is deemed to comply with this subsection.

(3) No warehouseman shall fail to deliver grain as provided in this section.

(4) In addition to being subject to penalties under ORS 586.990 for violation of subsection (3) of this section, if a warehouseman fails to deliver grain as provided in this section, the person entitled to delivery of the grain may maintain an action against the warehouseman for any damages resulting from the warehouseman's failure to deliver. In any such action the person entitled to delivery of the grain has the option to seek recovery of actual damages or of liquidated damages of one cent per bushel for each day's delay. [Amended by 1955 c 731 §15, 1961 c 726 §420]

586.410 Loading and shipping instructions; liability of warehousemen. Owners of negotiable grain warehouse receipts surrendered for shipment of grain or of grain in a public warehouse for which load slips only are furnished shall furnish the warehouseman with written instructions regarding the capacity of cars to be ordered from the transportation company and as to the manner of loading and billing shipments made in such cars as are furnished by the transportation company. The warehouseman shall load and bill all such shipments in exact accordance with instructions given, and is liable to the owner of the receipt so surrendered or of the grain for which load slips only are furnished for the amount of any excess freight paid, or for other damages suffered, by the owner of the receipt or grain resulting from the failure of the warehouseman to follow exactly the loading and billing instructions as given the warehouseman. [Amended by 1955 c 731 §16]

586.415 Approval of holder of receipt required before sale, shipment or other transaction. No warehouseman shall sell, encumber, ship, transfer or in any manner remove or permit to be shipped, transferred or removed from a warehouse any grain received by the warehouseman for deposit or handling, without the written approval of the holder of the warehouse receipt or load slip. [1961 c.445 §16]

586.420 [Repealed by 1955 c 731 §34]

586.425 [1957 c 11 §4; 1957 c.314 §3, 1961 c.726 §421; repealed by 1963 c 116 §1]

586.430 [Repealed by 1955 c.731 §34]

586.440 [Repealed by 1955 c 731 §34]

586.450 [Repealed by 1955 c 731 §34]

586.460 [Repealed by 1955 c 731 §34]

586.470 [Repealed by 1955 c.731 §34]

586.480 [Repealed by 1955 c.731 §34]

586.490 [Repealed by 1955 c.731 §34]

586.500 [Repealed by 1955 c.731 §34]

586.510 [Repealed by 1955 c.731 §34]

586.520 Inspection of warehouses; records required of warehouseman. (1) Upon the request of any person or persons having an interest in grain stored in any public warehouse and upon payment of $25 in advance, the department shall cause such warehouse to be inspected and shall cause to be checked the outstanding negotiable grain warehouse receipts and load slips which have not been superseded by negotiable grain warehouse receipts with the grain on hand and shall report the amount of receipts and load slips outstanding and the amount of storage, if any. If the cost of the examination is less than $25 the excess shall be returned to the person making the payment, and if the cost of the examination is more than $25 the person or persons having an interest in the grain stored in any such warehouse, and requesting such examination, shall pay the additional cost to the department.

(2) The department may cause every such warehouse and business thereof and the mode of conducting the warehouse to be inspected by one or more of its officers, employees or inspectors whenever deemed proper. A public warehouse shall be maintained in a manner adequate to provide convenient and safe means of ingress and egress to the various storage bins and compartments by those persons authorized to make inspections. The warehouseman shall cooperate with the department in any inspection of the warehouse or warehouse records and shall assist the department in every reasonable manner in any of such inspections.

(3) The property, books, records, accounts, papers and proceedings of every such warehouseman shall at all times during the business hours be subject to such inspection by the department. The warehouseman shall maintain adequate records and systems for the filing and accounting of warehouse receipts, canceled warehouse receipts, load slips, other documents and transactions necessary or common to the warehouse industry. Canceled warehouse receipts, copies of load slips and other copies of documents evidencing ownership or ownership liability shall be retained by the warehouseman for a period of at least three years from date of cancellation. [Amended by 1955 c.731 §17; 1957 c 11 §5; 1957 c.314 §2; 1969 c.190 §4; 1981 c.204 §2]

586.525 Procedure in case of probable shortage in grain or where warehouseman refuses to submit to inspection. (1) Whenever it appears probable after investigation that a licensed warehouseman has not in possession sufficient grain to cover the outstanding warehouse receipts, load slips or other evidence of storage liability issued or assumed by the warehouseman, or when such warehouseman refuses to submit books, papers or property to lawful inspection, the department may give notice to the warehouseman to comply with all or any of the following requirements:

(a) Cover such shortage.

(b) Give additional bond.

(c) Submit to such inspection as the department may deem necessary.

(2) If such warehouseman fails to comply with the terms of such notice within 24 hours from the date of its issuance, or within such further time as the department may allow, the department, represented by the Attorney General or the district attorney of the county in which the warehouse is located, shall apply to the circuit court of such county for an order:

(a) Authorizing the department to take possession of all special piles and special bins of grain and all commingled grain in the public warehouse or warehouses owned, operated or controlled by the warehouseman, and of all books, papers and property of all kinds used in connection with the conduct or the operation of such warehouseman's warehouse business, whether such books, papers, records and property pertain specifically, exclusively, directly or indirectly to that business, or are related to the handling, storage or use of grain of the warehouseman in any other business; and

(b) Enjoining the warehouseman from interfering with the department in the discharge of its duties as required by this section.

(3) Upon taking possession the department shall give written notice of its action to the surety on the bond of the warehouseman and may notify the holders of all warehouse receipts or other evidence of deposits issued for grain, to present their warehouse receipts or other evidence of deposits, for inspection, or to account for the same. The department may thereupon cause an audit to be made of the affairs of such public warehouse with respect to the grain in which there is an apparent shortage, determine the amount of such shortage and compute the shortage as to each depositor of grain. The department shall notify the warehouseman and the surety on the bond of the warehouseman of the amount of such shortage and notify each depositor thereby affected.

(4) The department shall retain possession of the grain in the warehouse or warehouses, and of the books, papers and property of the warehouseman, until such time as the warehouseman or the surety on the bond shall have satisfied the claims of all holders of warehouse receipts or other evidence of deposits, or, in case the shortage

exceeds the amount of the bond, the surety on the bond shall have satisfied such claims pro rata, or until such time as the department is ordered by the court to surrender possession.

(5) If during or after the audit provided for in this section, or at any other time the department is of the opinion that the warehouseman is insolvent or in danger of becoming so or is unable to satisfy the claims of all holders of warehouse receipts or other evidence of deposits, the department, represented by the Attorney General or the district attorney of the county in which the public warehouse is located, may petition the circuit court of such county for the appointment of a receiver to operate or liquidate the business of the warehouseman in accordance with law.

(6) At any time within 10 days after the department takes possession of any grain, or the books, papers and property of any licensed grain warehouse, the warehouseman may serve notice upon the department to appear in the circuit court of the county in which such warehouse is located, at a time to be fixed by such court, which shall be not less than five, nor more than 15 days from the date of the service of such notice, and show cause why such grain, books, papers and property should not be restored to the possession of the warehouseman.

(7) All expenses incurred by the department in carrying out the provisions of this section shall be a first charge and lien upon the assets of the warehouseman, and may be recovered in a separate civil action brought by the department, represented by the Attorney General or the district attorney, in the circuit court of the county in which the public warehouse is located, or recovered at the same time and as a part of the action filed under this section.

(8) As a part of the expenses so incurred, the department or the receiver is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers and others engaged in carrying out the provisions of this section.

(9) Nothing in this section shall be construed as a waiver by the State of Oregon of any immunity against suit or action. [1957 c.11 §3; 1961 c.445 §17]

586.527 Settlement of claims against defaulting warehouseman. (1) If the department considers the appointment of a receiver or other action provided by ORS 586.525 inadvisable or inexpedient in the case of depositors of grain in a public warehouse operated by a warehouseman who is in default as to any condition of bond, it may obtain settlement for such depositors as provided in this section.

(2) The department shall:

(a) Give reasonable notice to persons holding warehouse receipts or other evidence of deposit issued by the defaulting warehouseman, to file claims with the department.

(b) Fix a reasonable time within which such filing shall be done.

(c) Investigate each claim so filed and reasonably verify the circumstances under which the claims accrued and the good faith of the claimants.

(3) With the approval of the claimants who filed claims, the department may settle such claims with the surety without filing legal action. Such settlement unless appealed to the circuit court within 30 days as provided by law, is final between the surety and all claimants covered by the bond.

(4) If any claimant or the surety does not agree with the findings of the department, the department shall file a declaratory judgment action without right to jury trial in the circuit court in the name of the State of Oregon for the benefit of the claimants as authorized by ORS chapter 28. Unless appealed as prescribed by law, the order of the court shall be final between the surety and all claimants covered by the bond. [1961 c.445 §19; 1979 c.284 §177]

586.529 Receivership of warehouse business; claims against surety. (1) An employee of the department may be appointed receiver if the court is unable, or deems it inadvisable, to obtain the services of another qualified person to accept the position as authorized by ORS 586.525. If a person other than an employee of the department is appointed a receiver and if at any time it is apparent to the court that there is or may be insufficient assets from which to make reasonable payment for expenses or services rendered or to be rendered, the department is authorized with the approval of the court from funds received under this chapter, to make payment to such receiver for services rendered or expenses incurred thereunder of a total amount not to exceed $2,000 in any one particular receivership. The department is entitled to be reimbursed from the assets of the receivership on the same basis and priority as otherwise applies by law to payment to receivers appointed by the court.

(2) If a receiver is appointed as authorized by ORS 586.525, the surety on the bond of the warehouseman shall be made a party to the receivership and the action filed by the department. In addition to other authority provided by law, the receiver shall have

authority to give notice and provide a reasonable time, as approved by the court, to persons holding warehouse receipts or other evidence of deposit issued by the defaulting warehouseman, to file their claims with the receiver. The receiver shall investigate each claim, determine the pro rata share of grain less set-offs, or the proceeds of the sale of such grains, due each claimant. The receiver shall also determine the amount, if any, due each claimant by the surety. The court after hearing may adopt or amend the findings of the receiver and shall by order, make distribution of grains or the proceeds from the sale of grains. The court by order shall also require the surety to make payment to claimants. Such orders unless appealed as otherwise authorized by law, are to be a final settlement of such matters between the parties concerned. The receiver is authorized with the approval of the court to continue the operation of all or any part of the entire business of the warehouseman and to take any other course of action or procedure which will best serve the interests of the depositors or those who need and use the services offered by the licensee and the warehouse. [1961 c 445 §20]

586.530 Establishment of standard grades for commodities received. (1) The department shall fix and establish standard grades to apply to all grain received for shipment or storage by public warehouses in this state. The department may establish standard grades for hay and other agricultural commodities received for shipment or storage at such warehouses.

(2) The standards shall be established or changed in accordance with the provisions of ORS 632.900 to 632.935. [Amended by 1955 c.731 §18, 1969 c 190 §5]

586.540 [Repealed by 1955 c.731 §34]

586.550 Warehousemen to keep copy of regulations available for inspection. (1) It is the duty of the department, immediately after the establishment of grades under ORS 586.530, to supply all warehousemen with a copy of the grades, rules and regulations of the department.

(2) Every public warehouseman shall keep:

(a) The copy of grades, rules and regulations on file in a convenient place in every such warehouse.

(b) If an office is maintained in connection with such warehouse, a copy of the grades, rules and regulations on file in the office.

(c) A placard notice, furnished by the department, posted in a conspicuous place in every such warehouse and such office, reading as follows: "A copy of Oregon grades, rules and regulations is on file here for information of interested parties."

(3) Every warehouseman shall exhibit the copy of grades, rules and regulations to any interested party applying therefor at the warehouse or office and shall permit the interested party to examine and consult the copy. [Amended by 1955 c 731 §19]

586.555 Warehouseman's reports to department. Each warehouseman shall report information to the department at such times and as may be required by the department for the necessary enforcement and supervision of a sound, reasonable and efficient warehouse inspection program for the protection of depositors of grain and for persons or agencies who lend money against such grains. [1961 c.445 §21]

586.560 [Repealed by 1955 c 731 §34]

586.561 Discontinuance of operation of warehouse. (1) Any person operating a public warehouse who desires to discontinue the operation shall at least 30 days prior to the date of expiration or closing date notify, by certified or registered mail, at the last-known address all holders of warehouse receipts, all persons storing grain in such warehouse and the department of the intention to discontinue the public warehouse business.

(2) If the address of any holder of a warehouse receipt or persons storing grain is unknown, then the person operating a public warehouse shall also give notice of the intention to discontinue the operation of a public warehouse by publication in some newspaper of general circulation in the county once a week for two consecutive weeks. The date of the second published notice shall be at least 30 days prior to the date of expiration of the operations.

(3) It shall be the duty of owners of such grain to remove, or cause to be removed, their grain from such warehouse before the expiration date.

(4) If the warehouseman has not notified all persons or holders of warehouse receipts as provided in subsection (1) of this section or published a notice as provided by subsection (2) of this section, and if at the expiration date of the operations of the warehouseman there are outstanding warehouse receipts covering grain in storage in the warehouse, or in the opinion of the department there is reasonable evidence of outstanding liability by the warehouseman under ORS 77.1010 to 77.6040 or this chapter, then:

(a) The warehouseman is required to apply for, obtain and maintain a bond as provided for in ORS 586.300 until such date that the department determines all grain has been

removed from the warehouse or the rights or claims of all holders of warehouse receipts have been protected and satisfied.

(b) The department may invoke and is authorized to use the procedures and authority as provided for in ORS 586.525. The department is authorized to carry out and the warehouseman is subject to the provisions of ORS 586.525 regardless of the fact that the license of the warehouseman may have expired. [1957 c.11 §1; 1961 c.726 §422]

GRAIN AND COMMODITY INSPECTION, WEIGHING AND GRADING

586.570 Department to control weighing, inspection and grading of grain at inspection points; inspection of commodities other than grain; records to be kept; certificates issued. (1) The department shall have exclusive control of the weighing, inspection and grading of grain at all inspection points established under ORS 586.600, including public terminal warehouses. The department may also, upon the request of any interested party, weigh, grade, sample or inspect commodities of commerce other than grain including but not limited to hay, grain or hay products, rice, beans and other agricultural or horticultural commodities, fertilizer, sulphur or other chemicals used in the arts, science or in manufacturing, when such commodities are received from or delivered to any rail, water or other motor vehicle carrier within the state in commercial transportation. The department may certify the weight, grade or other results of its inspection in accordance with the request therefor, insofar as its personnel and facilities permit. The action and certificate of the department, signed by one of its officers, employees, inspectors or weighers in the discharge of duties, as to all commodities weighed, graded or inspected by the officer, employee, inspector or weigher, is conclusive upon all parties interested but appeal may be taken to the department in the manner provided in ORS 632.960. The provisions of ORS 632.965 shall apply to any certificate issued under the provisions of this section.

(2) Suitable books and records shall be kept in which shall be entered a faithful and true record of every carload, motor vehicle load or cargo or part of cargo of grain and other commodities inspected, graded or weighed by the department, showing the following:

(a) The number and initial or other designation of the car, motor vehicle or boat containing the carload, load or cargo or part thereof.

(b) Its weight.

(c) The kind of grain or other commodity, and its grade.

(3) For each carload, load or cargo, or part thereof, of grain or other commodity inspected, the officers, employees, inspectors and weighers of the department shall, if requested so to do by consignor or consignee, give a certificate of inspection showing:

(a) The kind and grade of such grain or commodity and the reason for all grades below No. 1.

(b) If other than bulk, the number of sacks, bales or other parcels thereof, with the grade or grades and weight of same.

(4) The department also shall furnish the agent of the railroad company or other carrier over which such commodity was shipped or carried a certificate showing the weight thereof, if requested so to do.

(5) The department also shall keep a true record of all appeals, decisions and a complete record of every official act, which books and records shall be open to inspection by any party in interest. [Amended by 1955 c.731 §20]

586.580 Fixing fees for inspecting, grading and weighing; fees as lien. The department shall fix the fees for inspection, grading and weighing of grain and other commodities included in the provisions of ORS 586.210 to 586.730, which fees shall be sufficient to cover the cost of such service. The fees for the inspection, grading and weighing of grain or other commodities are lien upon such grain or other commodities and shall, in the case of grain and hay only, be paid by the carrier transporting it and treated by the carrier as advanced charges. The department may prescribe a different scale of fees for different localities. Notwithstanding any other provision of this chapter, the fees charged for inspection, grading and weighing at Portland and at Pendleton shall be the same. [Amended by 1955 c.731 §21; 1967 c.208 §7]

586.590 Review by department of decisions as to grades. If any owner, consignee or shipper of grain or other commodity, or the agent or broker of the owner, consignee or shipper or any warehouseman, is aggrieved at the grading of such commodity, the aggrieved person may appeal to the department as provided in ORS 632.960. Notice of appeal to the department shall state that the party appeals from the decision of the inspector and shall specify the initials and numbers of cars or motor vehicles or the name of the ship in which the commodity was contained when inspected and graded. [Amended by 1955 c.731 §22]

586.600 Designating inspection points. Any place where grain is received in carload

lots or by watercraft, or motor vehicle, may be designated by the department as an inspection point and be provided with state inspection, grading and weighing. [Amended by 1955 c 731 §23, 1967 c.208 §10]

586.610 Inspection and grading of grain and hay at public terminal warehouses; weighing of grain at inspection points. (1) All grain and hay received at public terminal warehouses may be inspected and graded by the department. All grain received at public terminal warehouses, except that received in truck lots of not more than 15 tons of grain, shall be weighed by or under the supervision of the department. Weighing is not required where grain has been officially weighed at point of origin unless it is so requested by the consignee. If requested, all grain delivered out of any such warehouse shall be inspected, weighed or graded in like manner and a certificate of grade issued.

(2) All other grain received at inspection points in carload lots or in any other manner, in lots containing more than 15 tons of grain, not unloaded at a public terminal warehouse, shall be weighed. [Amended by 1955 c 731 §24; 1969 c.190 §6]

586.620 [Repealed by 1955 c 731 §34]

586.630 Examination of cars and seals on arrival for inspection, grading or weighing; opening, unloading and resealing cars; authorized persons only to act. (1) Any officer, employee, deputy inspector, sampler or weigher of the department before opening the doors of any car containing grain, hay or any other commodity for the purpose of inspection, grading or weighing shall first ascertain the condition of such cars and determine whether any leakages have occurred while the cars were in transit, whether or not the doors were properly secured and sealed at point of shipment, and shall make a record of such facts in all cases, giving seal numbers.

(2) After such examinations are made and recorded, and the inspection, grading or weighing of such grain, hay or other commodity has been made, such officials shall securely close and reseal such doors as have been opened by them, using the special seal of the department for the purpose. Such officials shall make a record of all original seals broken by them, the date when broken, the state seals substituted therefor and the date and number of such seals.

(3) The authorized officers, employees, inspectors, deputies, samplers or weighers of the department shall break the seal, weigh and superintend the unloading of all cars of grain, hay or other commodity subject to inspection, grading or weighing. No person other than the authorized officers, employees, inspectors, deputies, samplers or weighers of the department shall break the seal or weigh such cars of grain, hay or other commodity. [Amended by 1955 c.731 §25]

586.640 Sidetracks for cars to be inspected, graded or weighed; distribution of cars after inspection. Any railroad delivering grain, hay or other commodities in cars at any of the places provided with state inspection under ORS 586.210 to 586.730 shall designate safe and convenient sidetracks on which all cars of such commodities required to be inspected, graded or weighed shall upon arrival be set and arranged convenient for inspection, grading or weighing and there held until the inspection, grading or weighing has been completed, subject to applicable tariffs, charges and limitations. [Amended by 1955 c.731 §26]

586.650 Loading or unloading outside usual hours; additional fees for inspection, grading and weighing; compensation of department employees. (1) When occasions arise where it is deemed advisable to load or unload cars, motor vehicles or cargoes of grain, hay or other commodities outside of the usual working days or working hours, the department shall provide inspectors and weighers necessary to supervise the inspection, grading and weighing of such commodities. The department shall, by rule, fix a reasonable sum per hour to be paid therefor by the party requesting such unusual service. Such fees are in addition to the regular fees provided for weighing, grading and inspection.

(2) All moneys collected under the provisions of this section shall be paid into the State Treasury and credited to the Department of Agriculture Account and an amount not exceeding such additional fees may be paid to the employees of the department by whom such additional service may be performed. [Amended by 1955 c 731 §27]

586.660 Samples of products graded, inspected or weighed; furnishing samples to those handling or dealing in grain. Samples may be drawn from all grain and other commodities inspected, graded or weighed. Such samples become the property of the state and are subject to disposition by the department under such rules and regulations as the department prescribes. The department shall transmit samples of grain showing the standards thereof adopted to such foreign chambers of commerce, boards of trade, exporters and persons, firms, corporations or associations handling and dealing in grain, as the department deems desirable. Upon request the department shall furnish such samples to similar parties in this state or the United States under such reasonable

rules and regulations as the department prescribes. [Amended by 1955 c 731 §28]

586.670 Examining grain stored in warehouses. Every person having an interest in any grain stored in any public warehouse has the right to examine at all times during ordinary business hours any grain so stored, and all parts of the public warehouse. Every warehouseman, the agents and servants of the warehouseman, shall furnish proper facilities for such examination. [Amended by 1955 c.731 §29]

586.680 When shipper's weight and grade final and conclusive. When grain, hay or any other agricultural commodity is shipped to points where inspection is provided and the grain, hay or other agricultural commodity is unloaded without being inspected, graded or weighed by the department under the provisions of ORS 586.210 to 586.730, the shipper's weight and grade is conclusive and final and is the weight and grade upon which settlement shall be made with the seller. [Amended by 1955 c.731 §30]

586.690 [Repealed by 1955 c.731 §34]

586.700 [Repealed by 1955 c.731 §34]

MISCELLANEOUS PROVISIONS

586.710 Disposition of certain fees; continuing appropriation. Except for fees paid under ORS 586.270, 586.580 and 586.650, all fees collected by the department under this chapter shall be paid into the State Treasury to the credit of the Department of Agriculture Account. Such moneys constitute a continuing appropriation for the purpose of carrying out the provisions of this chapter. The fees paid to the department under ORS 586.270, 586.580 or 586.650 shall be deposited in the Department of Agriculture Service Fund, and such funds are continuously appropriated to the department for the purpose of administering and enforcing this chapter. [Amended by 1955 c 731 §31; 1979 c 499 §10]

586.720 Application of Uniform Commercial Code—Documents of Title, and other laws to public warehouses and warehousemen. (1) Except as provided in subsection (2) of this section, every public warehouse and warehouseman complying with the provisions of ORS 586.210 to 586.730 is exempt from all the provisions of all other laws of this state regulating and licensing warehouses and warehousemen.

(2) The provisions of ORS 77.1010 to 77.6040 apply to public warehouses and warehousemen complying with the provisions of ORS 586.210 to 586.730 to the extent that the provisions of ORS 77.1010 to 77.6040 are not inconsistent with the provisions of ORS 586.210 to 586.730. [Amended by 1955 c.731 §32; 1961 c.726 §423]

586.730 Violation of ORS 586.210 to 586.730 prohibited. (1) No warehouseman shall violate, or procure, aid, or abet any violation by any warehouseman, of any provision of ORS 586.210 to 586.300, 586.315 to 586.380, 586.400, 586.410, 586.520, 586.525, 586.530, 586.550, 586.570 to 586.630 and 586.650 to 586.730, or fail to comply with any order of the department, or procure, aid or abet any warehouseman in failure to comply with any such order.

(2) No person, individually or acting as an official or agent of any corporation other than a warehouseman, shall violate any provisions of ORS 586.210 to 586.300, 586.315 to 586.380, 586.400, 586.410, 586.520, 586.525, 586.530, 586.550, 586.570 to 586.630 and 586.650 to 586.730, or fail to comply with any order made by the department under those sections so long as the order remains in force, or procure, aid or abet any such corporation, in its violation of those sections, or in its failure to comply with any such order. [Amended by 1983 c.740 §226]

PENALTIES

586.990 Penalties. (1) Violation of ORS 586.250 is punishable, upon conviction, by a fine of not less than $200 nor more than $1,000, or by imprisonment in the county jail for not less than six months nor more than one year, or by both.

(2) Violation of ORS 586.730 is punishable, upon conviction, by a fine not exceeding $1,000, or by imprisonment in the county jail for not more than one year, or by both.

(3) Violation of any of the provisions of ORS 586.210 to 586.300, 586.315 to 586.380, 586.400, 586.410, 586.520, 586.525, 586.530, 586.550, 586.570 to 586.630 and 586.650 to 586.720, or failure to comply with any order, rule, direction, demand or requirement of the department made pursuant to those sections, is punishable, upon conviction, by a fine not exceeding $1,000 for each offense. Each violation is a separate and continuing offense; and in case of a continuing violation, every day's continuance of the violation is a separate and distinct offense.

(4) Violation of ORS 586.382, 586.385 and 586.395 is a misdemeanor. [Amended by 1955 c.731 §33, subsection (4) added by 1961 c 445 §22, 1961 c 726 §424; 1963 c.116 §2; 1983 c.740 §227]