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Requirements for Grain Warehouses:

Oregon



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Requirements for Grain Warehouses: Oregon

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- 4) Indemnity Fund:
- 5) Failure/Liquidation: [§§ 586.395 to .400; .525](#)
- 6) Prompt Payment: [§ 576.705](#)
- 7) Penalties: [§ 586.990](#)
- 8) Lien:

OR St. Tit. 47, Ch. 576; Ch. 586

Current through 2020 Regular Session.

576.006 Definitions for ORS 576.006 to 576.022.

As used in ORS 576.006 to 576.022:

- (1) "Department" means the State Department of Agriculture of the State of Oregon.
- (2) "Farm products" means all agricultural, floricultural, vegetable and fruit products of the soil, livestock and meats, poultry, eggs, dairy products, and any and all products which have their situs of production on the farm.
- (3) "Food products" means any and all products either in a natural or processed state used by human or animal as food.

576.009 Agricultural Development Division.

There is established within the State Department of Agriculture an Agricultural Development Division which shall have the powers and duties conferred by ORS 576.006 to 576.022, and as specified by the Director of Agriculture. The Agricultural Development Division shall consist of a market development service and a commodity development service.

576.010 [Repealed by 1953 c.119 §2]

576.013 Purpose of market development and commodity development services; powers of department; limitations.

- (1) The purpose of the market development service of the Agricultural Development Division shall be to assist in the establishment and development of new markets and to maintain or expand existing domestic and foreign markets for farm and food commodities produced or

processed in this state. The purpose of the commodity development service of the Agricultural Development Division shall be to assist in the development and improvement of farm and food commodities and their values and uses.

(2) In furthering the purpose of the market development service, the State Department of Agriculture may:

- (a) Collect and disseminate information relating to the availability, quality and uses of farm and food commodities produced or processed in this state, including participation in demonstrations, fairs and exhibits;
- (b) Serve as an intermediary between prospective purchasers and sellers of farm and food commodities produced or processed in this state as to source of supply and demand;
- (c) After notice to and with the approval of the Governor, represent the state in matters of legislation or rulemaking affecting the establishment, development, maintenance or expansion of markets for farm and food commodities produced or processed in this state;
- (d) Cooperate with and aid producers, processors, distributors and prospective purchasers of farm and food commodities in establishing, or improving and maintaining, an efficient system of production, processing, distribution and marketing of farm and food commodities;
- (e) Investigate delays, embargoes, conditions and practices, charges and rates in the marketing, transportation and handling of farm and food commodities produced or processed in this state, and when an investigation discloses a probable violation of state or federal law, make recommendations to the proper state or federal authorities for appropriate action;
- (f) Engage in negotiations with common and contract carriers and initiate or participate in the prosecution of proceedings before agencies engaged in freight rate regulation within or without this state in matters relating to the establishment of new freight rates, the modification of existing freight rates or to unjust, unreasonable or discriminatory rates or practices affecting the cost of transportation, production or processing of farm or food commodities produced or processed in this state;
- (g) Investigate the advisability and need for establishment of terminal, regional, assembly, dock and other distributing facilities for the delivery, sale and distribution of farm and food commodities at or near the point of purchase or use, and advise and cooperate with public or private agencies or organizations in promoting the establishment, construction or acquisition of the facilities for public use and make recommendations as to their operations;
- (h) Accept grants from public or private agencies, organizations or persons, with any grant treated as a trust fund, separate and distinct from the General Fund, within the meaning of ORS chapters 291 and 293;

(i) Consult with other states in development of joint programs for the establishment, development, maintenance or expansion of domestic and foreign markets on a mutual basis;

(j) Cooperate with the Oregon Business Development Department of this state in foreign and domestic marketing matters of common interest; and

(k) Enter into agreements with public and private entities in new or existing markets to assist the establishment, development, maintenance or expansion of those markets and provide for sampling, testing, certification or other procedures or processes to facilitate the movement of, or optimize the value of, farm and food products.

(3) In furthering the purpose of the commodity development service, the department may:

(a) Collect and disseminate information relating to new or alternate crop production, processing and marketing feasibilities to producers of farm and food commodities;

(b) Assist the commodity commissions in carrying out mutual or joint scientific research efforts and mutual or joint development of the commercial values and new and additional uses of their commodities; and

(c) Accept grants from public or private agencies, organizations or persons, with any grant treated as a trust fund, separate and distinct from the General Fund, within the meaning of ORS chapters 291 and 293.

(4) Nothing in ORS 576.006 to 576.022 shall authorize, or modify the limitations on authority under ORS 561.170 for, the Agricultural Development Division, or its staff to:

(a) Engage in any commercial transaction involving farm or food commodities as purchaser, seller, broker or dealer; or

(b) Acquire or own any farm or food commodities or real property associated with them.

576.015 [1953 c.489 §37; renumbered 576.053]

576.017 [1955 c.572 §4; repealed by 1973 c.794 §34]

576.018 [1985 c.623 §2; repealed by 1993 c.742 §60]

576.019 Discrimination against any product or dealer prohibited.

In the performance of duties, under ORS 576.006 to 576.022, no official or employee of the State Department of Agriculture shall discriminate against any farm or food product, or against any producer, processor, distributor or dealer of any such products.

576.020 [Repealed by 1953 c.119 §2]

576.022 Authority and functions of Oregon State University unaffected; department may seek information from university.

Nothing in ORS 576.006 to 576.022 shall be construed to limit, alter, repeal or duplicate the existing authority and functions of Oregon State University enumerated in ORS 561.362 and full effect shall be given to the provisions of ORS 561.364 and 561.366. The State Department of

Agriculture may call upon Oregon State University for such technical and statistical information as it may need and as the university may be able to provide.

576.024 Department authorized to inspect records and businesses for economic study purposes.

(1) It is necessary for the economy of this state, the livestock industry and the welfare of the consuming public that the department obtain statistical information for economic studies of the livestock industry including the volume of production of livestock in this state; the channels into which such livestock is marketed; the total consumption of meat in this state; the types and quantities consumed and the sources thereof; and such other information as is pertinent to reveal additional potential markets for livestock produced in this state.

(2) In order to carry out and maintain this continuing study, the department is authorized during business hours to inspect the records of places or businesses which handle, store or sell meat animals, or meat as defined in ORS 619.010 to 619.071, 619.370 and 619.993.

(3) The department, after public hearing under ORS chapter 183, may require periodic reporting from the places or businesses described in this section and require the furnishing to the department of the data or information which may be needed in continuing the comprehensive study as authorized in this section.

576.030 [Repealed by 1953 c.119 §2]

576.035 Market news service in Klamath Basin, central Oregon and Malheur areas.

Oregon State University, acting through the Federal Cooperative Extension Service of the university, shall cooperate with the Agriculture Marketing Service of the United States Department of Agriculture and with the appropriate offices of adjoining states to establish and maintain a food product market news service in the Klamath Basin and provide such services for the central Oregon and Malheur areas.

576.040 [Repealed by 1953 c.119 §2]

576.041 [1967 c.265 §1; repealed by 1971 c.28 §1]

576.043 [1967 c.265 §2; repealed by 1971 c.28 §1]

576.044 [1977 c.198 §6; 1985 c.623 §5; 2003 c.604 §§28,29; renumbered 576.066 in 2003]

576.045 [1967 c.265 §3; repealed by 1971 c.28 §1]

576.047 [1967 c.265 §4; repealed by 1971 c.28 §1]

576.049 [1967 c.265 §5; repealed by 1971 c.28 §1]

576.050 [Repealed by 1953 c.119 §2]

576.051 Definitions for ORS 576.051 to 576.455. As used in ORS 576.051 to 576.455, unless the context requires otherwise:

(1) "Commercial channels" means the sale of the commodity for which a commodity commission is established for use as food, industrial, agricultural or chemurgic use, when sold to any commercial buyer or to any person who resells the commodity or any product derived therefrom.

(2) "Commission" means a commodity commission established under ORS 576.051 to 576.455.

(3) "Commodity" means any distinctive type of agricultural, horticultural, viticultural, vegetable, animal or seafood product, or any class, variety or utilization thereof, in a natural or processed state, including bees and honey but not including timber or timber products. The Director of Agriculture may determine what types or subtypes of commodity may be classed together as a commodity for the purposes of ORS 576.051 to 576.455.

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

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

(6) "First purchaser" means any person who buys the commodity for which a commission is established from the producer in the first instance, or handler who received the commodity in the first instance from the producer for resale or processing.

(7) "Handler" means any producer, processor, distributor or other person engaged in the handling or marketing of or dealing in the commodity for which a commission is established, whether as an owner, agent, employee, broker or otherwise.

(8) "Producer" means a person that engages in, or has engaged in, the business of growing, producing or procuring within this state, or in the rivers or offshore waters of this state except the Columbia River, a commodity for market or for delivery or transfer to others owning or holding title to the commodity. "Producer" includes a landowner, landlord, tenant, sharecropper, boat skipper or other person that participates in the growing, producing or procuring of a commodity and receives a share of the commodity.

(9) "Regional commission" means a commission that functions only within a specified area of this state consisting of one or more entire counties.

576.053 Short title. ORS 576.051 to 576.455 and 576.991 (2) may be known and cited as the Commodity Commission Act.

576.054 Legislative findings.

(1) The Legislative Assembly finds that:

(a) Commodity industries are vital elements of the state economy. Commodity industries:

- (A) Are sources of substantial employment for the citizens of this state;
- (B) Produce needed tax revenues for the support of state and local government;
- (C) Encourage responsible stewardship of valuable land and marine resources; and
- (D) Produce substantial quantities of necessary food for the state, nation and world.

(b) Commodity commissions support commodity industries and enhance and preserve the economic interests of the state.

(c) Commodity commissions function in the same manner as a broad range of other programs established by the Legislative Assembly that are funded by the public through fees assessed according to the relationship of the fee payer to a particular program.

(d) Commodity commissions are not established to benefit individual persons engaged in commodity industries, but are intended to improve the overall conditions for the particular commodity for which a commission is established and thereby benefit the overall economy of the state and all the citizens of the state.

(e) Mandated cooperative efforts engaged in by commodity commissions are a proven, effective method to avoid economic waste and maintain stable agricultural markets.

(f) It is in the public interest that:

- (A) Support for Oregon's commodity industries be clearly expressed;
- (B) Adequate protection be given to commodities and commodity uses, activities and operations; and
- (C) Each commodity be promoted individually and as part of a stabilized comprehensive industry by increasing consumption of commodities in this state and the United States and internationally.

(2) It is the intent of the Legislative Assembly that commodity commissions do the following for the purpose of serving commodity industries and the citizens of this state:

- (a) Participate in the formulation and implementation of public policy through expressive activities.
- (b) Reflect a continuing commitment by the state to commodity industries that are integral to the economy of this state.

(c) Represent a policy of support for persons engaged in commodity industries and for their critical role in the economy of this state, especially the economy of rural areas.

(d) Provide benefits to entire commodity industries and all the citizens of this state.

(e) Enhance the image of Oregon commodities for the purpose of increasing the overall demand for those commodities. To achieve that purpose, the Legislative Assembly intends that commodity commissions operate primarily to create a more receptive environment for commodities and for the individual efforts of persons engaged in commodity industries and thereby complement individual, targeted and specific activities.

(f) Use mandatory cooperative efforts to complement state, federal and international laws and programs.

(g) Protect the citizens of this state by educating them regarding the quality, care and methods used in the production of Oregon commodities.

(h) Increase knowledge regarding the healthful qualities and dietetic value of Oregon commodities.

(i) Support and engage in research programs and activities that benefit the planting, production, harvesting, handling, processing, marketing and use of Oregon commodities.

576.055 [1953 c.489 §2; subsection (2) formerly part of 576.295; 1957 c.447 §2; 1959 c.596 §2; 1965 c.515 §1; repealed by 2003 c.604 §109]

576.060 [Repealed by 1953 c.119 §2]

576.062 Establishment of commodity commissions.

The following commodity commissions are established as state commissions:

- (1) The Oregon Dairy Products Commission.
- (2) The Oregon Hazelnut Commission.
- (3) The Oregon Dungeness Crab Commission.
- (4) The Oregon Salmon Commission.
- (5) The Oregon Albacore Commission.
- (6) The Oregon Sheep Commission.
- (7) The Oregon Potato Commission.
- (8) The Oregon Alfalfa Seed Commission.
- (9) The Oregon Blueberry Commission.
- (10) The Oregon Clover Seed Commission.
- (11) The Oregon Fine Fescue Commission.
- (12) The Oregon Hop Commission.

- (13) The Oregon Mint Commission.
- (14) The Oregon Processed Vegetable Commission.
- (15) The Oregon Raspberry and Blackberry Commission.
- (16) The Oregon Ryegrass Growers Seed Commission.
- (17) The Oregon Strawberry Commission.
- (18) The Oregon Sweet Cherry Commission.
- (19) The Oregon Tall Fescue Commission.
- (20) The Oregon Trawl Commission.

576.065 [1953 c.489 §3; 1957 c.447 §3; 1959 c.596 §3; repealed by 2003 c.604 §109]

576.066 Department oversight of commodity commissions; rules.

(1) The State Department of Agriculture shall:

- (a) Monitor the practices or methods used or proposed for use by any commodity commission in carrying out the goals and needs disclosed by the budget of the commission;
- (b) Promote cooperation among the several commissions, the Oregon Beef Council and the Oregon Wheat Commission and assist in the interchange of information and experience among those entities;
- (c) Carry out the assigned organizational procedures under ORS 576.051 to 576.455, including the appointment and removal of members of the commission;
- (d) Review budgets submitted to the Director of Agriculture by a commodity commission under ORS 576.416; and
- (e) Adopt rules to carry out the provisions of ORS 576.051 to 576.455.

(2) The department shall review, and may approve or disapprove, plans and projects recommended by a commodity commission for commodity promotion, advertising and research and for the dissemination of consumer and commodity industry information. In reviewing plans and projects recommended by a commodity commission, the department shall consider whether the plan or project information is:

- (a) Factual;
- (b) Not disparaging to other commodities; and
- (c) Consistent with the purposes of ORS 576.051 to 576.455.

576.070 [Repealed by 1953 c.119 §2]

576.075 [1953 c.489 §4; 1957 c.447 §4; 1959 c.596 §4; repealed by 2003 c.604 §109]

576.078 [Formerly part of 576.085; 1959 c.596 §5; repealed by 2003 c.604 §109]

576.080 [Repealed by 1953 c.119 §2]

576.085 [1953 c.489 §5; 1957 c.447 §5; part renumbered 576.078; 1959 c.596 §6; repealed by 2003 c.604 §109]

576.090 [Repealed by 1953 c.119 §2]

576.091 [1959 c.596 §72; repealed by 2003 c.604 §109]

576.095 [1953 c.489 §6; 1957 c.447 §6; 1959 c.596 §7; repealed by 2003 c.604 §109]

576.100 [Repealed by 1953 c.119 §2]

576.105 [1953 c.489 §7; repealed by 2003 c.604 §109]

576.110 [Repealed by 1953 c.119 §2]

576.115 [1953 c.489 §8; 1957 c.447 §7; repealed by 2003 c.604 §109]

576.120 [Repealed by 1953 c.119 §2]

576.125 [1953 c.489 §9; 1955 c.732 §2; 1957 c.447 §8; repealed by 2003 c.604 §109]

576.130 [Repealed by 1953 c.119 §2]

576.135 [1953 c.489 §34; 1983 c.438 §1; repealed by 2003 c.604 §109]

576.140 [Repealed by 1953 c.119 §2]

576.145 [1953 c.489 §35; repealed by 2003 c.604 §109]

576.150 [Repealed by 1953 c.119 §2]

576.155 [1977 c.526 §2; repealed by 2003 c.604 §109]

576.160 [Repealed by 1953 c.119 §2]

576.165 [1983 c.688 §2; 1989 c.185 §1; repealed by 2003 c.604 §109]

576.170 [Repealed by 1953 c.119 §2]

576.171 [1999 c.672 §4; 2001 c.504 §3; repealed by 2003 c.604 §109]

576.175 [1989 c.748 §2; 1991 c.894 §1; 1999 c.178 §1; repealed by 2003 c.604 §109]

576.180 [Repealed by 1953 c.119 §2]

576.190 [Repealed by 1953 c.119 §2]

576.200 [Repealed by 1953 c.119 §2]

576.205 [1953 c.489 §11; 1957 c.447 §9; 1959 c.596 §8; 1977 c.198 §8; repealed by 2003 c.604 §3 (576.206 enacted in lieu of 576.205)]

576.206 Appointment of temporary members; rules; appointment of commissioners; commissioner qualifications; compensation.

(1) Upon the establishment of a commodity commission, the Director of Agriculture shall appoint five temporary members to the commission. In appointing the temporary members, the director shall give consideration to any recommendations by other commodity commissions, commodity growers and commodity grower associations. A majority of the temporary members must be producers of the commodity that is the subject of the commission and at least one member must be a handler of the commodity.

(2) The temporary members shall adopt rules for the commission in accordance with ORS chapter 183, including but not limited to rules establishing the number and geographic representation of the commissioners and rules providing for the removal of commissioners. The terms of the temporary members expire on the date that one or more commissioners are appointed under subsection (3) of this section. A qualified temporary member is eligible for appointment to a term on the commission under subsection (3) of this section.

(3) Except as provided in ORS 576.225 (3), the director shall appoint the commissioners for a commodity commission in accordance with the rules adopted under subsection (2) of this section. In appointing the commissioners, the director shall give consideration to any recommendations by other commodity commissions, commodity growers and commodity grower associations.

(4) A majority of the commissioners must be producers of the commodity that is the subject of the commission. At least one commissioner must be a handler of the commodity. One commissioner must be a member of the public not associated with the production or handling of the commodity. All commissioners other than handlers and the member of the public must be producers.

(5) The term of a commissioner appointed under subsection (3) of this section is four years unless a shorter term is established by commission rule. A commissioner is eligible for reappointment unless otherwise provided by commission rule. Before the expiration of a commissioner's term, the director shall appoint a successor to assume office upon expiration of the term. If there is a vacancy on a commission for any cause, the director shall appoint a person to the unexpired term.

(6) The commission shall select one member to serve as chairperson and another member to serve as vice chairperson, with such duties and powers as the commission deems appropriate to those offices.

(7) A temporary member of a commission or a commissioner is entitled to compensation and expenses in the manner and amounts provided in ORS 292.495. Claims for compensation

earned and expenses incurred in performing the functions of the commission shall be paid out of funds available to the commission.

576.210 [Repealed by 1953 c.119 §2]

576.215 Ex officio members of commission.

The Director of Agriculture and the Dean of the College of Agricultural Sciences of Oregon State University, or their respective official representative, shall be ex officio members of a commodity commission, without right to vote. When a commission is established for a seafood commodity, the chairperson of the State Fish and Wildlife Commission or the official representative of the chairperson shall also be an ex officio member of the commission, without right to vote. ORS 576.206 and 576.225 to 576.255 do not apply to ex officio members.

576.220 [Repealed by 1953 c.119 §2]

576.225 Qualifications of members; changes in commission composition; rules.

(1) A member of a commodity commission must, during the term of office of the member:

- (a) Be a citizen of the United States.
- (b) Be a bona fide resident of the state.
- (c) Have an active interest in the positive development and economic growth of the commodity industry in Oregon.

(2) A producer member of a commission must have paid an assessment adopted by the commission, if any, on the commodity in each of the preceding three calendar years. A handler member of a commission must have collected an assessment adopted by the commission, if any, on the commodity in each of the preceding three calendar years.

(3) In addition to any other authority of a commodity commission to adopt rules under ORS 576.304, at any time following the initial appointment of all commissioners for a commodity commission under ORS 576.206 (3), and subject to ORS 576.215, the commission may amend the rules adopted by the temporary commission members under ORS 576.206 (2) to change the number and geographic representation of the commissioners. Any rule amendment adopted under this subsection shall apply to commissioner appointments made by the Director of Agriculture after the effective date of the rule amendment.

576.235 [1953 c.489 §14; 1965 c.515 §2; 1977 c.198 §9; repealed by 2003 c.604 §109]

576.245 Office vacant when member ceases to be qualified.

The Director of Agriculture shall immediately declare the office of any appointed producer or handler member of a commodity commission vacant whenever the director finds that such member has ceased to be an active producer or handler in this state, has become a resident of another state or is unable to perform the duties of office.

576.255 Removal of members.

(1) The Director of Agriculture may remove any member of a commodity commission for inefficiency, neglect of duty or misconduct in office, after a public hearing and after serving upon the member a copy of the charges against the member, together with a notice of the time and

place of the hearing, at least 10 days prior to such hearing. At the hearing the member shall be given an opportunity to be heard in person or by counsel and shall be permitted to present evidence to answer the charges and explain the facts alleged against the member.

(2) In every case of removal, the director shall file in the office of the Secretary of State a complete statement of all charges against the member, the findings of the director and a record of the entire proceedings held in connection with the charges.

576.265 Travel and other expenses of members; per diem; rules.

(1) A commodity commission may adopt rules establishing the amount of payment that a member of the commission receives under ORS 292.495 (1) for each day or portion of a day during which the member is actually engaged in the performance of official duties. The amount may exceed, but not be less than, the amount of payment that would otherwise be provided under ORS 292.495 (1).

(2) Members, officers and employees of a commodity commission shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties. Subject to any limitations described under ORS 292.495 (2), the commission shall adopt uniform and reasonable rules governing the incurring and paying of such expenses.

576.275 Meeting place of commission.

A commodity commission may establish a meeting place anywhere within this state the commission selects, but the selection of the location must be guided by consideration for the convenience of the majority of those persons most likely to have business with the commission or be affected by the acts of the commission. This section does not prohibit a commission from participating in meetings outside this state for purposes of advancing the work of the commission.

576.285 Commission organization; meetings.

A commodity commission shall meet as soon as practicable for the purposes of organizing. It shall elect a chairperson and a secretary-treasurer from among its members. It shall adopt a general statement of policy for guidance, and shall transact such other business as is necessary to start the work of the commission. Thereafter, the commission shall meet regularly once each six months, and at such other times as called by the chairperson. The chairperson may call special meetings at any time, and shall call a special meeting when requested by two or more members of the commission.

576.295 [1953 c.489 §10; 1955 c.732 §3; part renumbered 576.055; 1959 c.596 §11; repealed by 2003 c.604 §109]

576.304 Authority of commodity commissions; rules. A commodity commission may:

(1) Appoint all subordinate officers and employees of the commission, prescribe their duties and fix their compensation.

(2) Levy assessments under ORS 576.325.

(3) Borrow money in amounts that do not exceed estimated revenues from assessments for the year.

(4) Enter into contracts for carrying out the duties of the commission.

- (5) Subject to ORS 30.260 to 30.300, sue and be sued in the name of the commission.
- (6) Request that the Attorney General prosecute in the name of the State of Oregon suits and actions for the collection of assessments levied by the commission.
- (7) Study state and federal legislation with regard to tariffs, duties, reciprocal trade agreements, import quotas and other matters affecting commodity industries and the state. A commission may represent and protect the interests of a commodity industry regarding any legislation, proposed legislation or executive action affecting the commodity industry.
- (8) Participate in federal and state hearings or other proceedings concerning regulation of the manufacture, distribution, sale or use of pesticides as defined in ORS 634.006 or other chemicals that are of use or potential use to producers of a commodity. This subsection does not authorize a commodity commission to regulate the use of pesticides.
- (9) To the extent consistent with the duties of the commission, participate in and cooperate with local, state, national and international private organizations or governmental agencies that engage in work similar to that of a commodity commission.
- (10) Provide mechanisms for maintaining and expanding existing markets and developing new domestic and foreign markets for a commodity, including but not limited to:
- (a) Public relations programs;
 - (b) Media relations programs;
 - (c) Paid print, electronic and position advertising;
 - (d) Point of sale promotion and merchandising;
 - (e) Paid sales promotions and coupon programs; and
 - (f) Activities that prevent, modify or eliminate trade barriers that obstruct the free flow of a commodity to market.
- (11) Conduct and fund research to:
- (a) Enhance the commercial value of a commodity and products derived from the commodity;
 - (b) Discover the benefits to public health, the environment or the economy of consuming or otherwise using a commodity;
 - (c) Develop better and more efficient production, harvesting, irrigation, processing, transportation, handling, marketing and uses of a commodity;
 - (d) Control or eradicate hazards to a commodity, including but not limited to hazards from animals, pests and plants;
 - (e) Develop viable alternatives for the rotation of crops;
 - (f) Determine new or potential demand for a commodity and develop appropriate market development strategies for capturing that demand; and
 - (g) Measure the effectiveness of marketing, advertising or promotional programs.

(12) Gather, publicize and disseminate information that shows the importance of the consumption or other use of a commodity to public health, the environment, the economy and the proper nutrition of children and adults.

(13) Further the purposes of this section by funding scholarships for or providing financial assistance to persons or entities interested in a commodity.

(14) Adopt rules in accordance with ORS chapter 183 for carrying out the duties, functions and powers of the commission.

576.305 [1953 c.489 §20; 1957 c.447 §13; 1959 c.596 §12; repealed by 2003 c.604 §7 (576.304 enacted in lieu of 576.305)]

576.306 Independent contractors performing services for commission; rentals and acquisitions; rules.

(1) A commodity commission may contract with an independent contractor for the performance of administrator or other services. However, the commission may not contract with an independent contractor to perform the discretionary functions of the commission. As used in this subsection, "discretionary functions" does not include collecting assessments, scheduling meetings, processing payments or other administrative duties, tasks or projects assigned by the commodity commission. ORS 279.835 to 279.855 and ORS chapters 240, 279A, 279B and 279C do not apply to the commission in obtaining services under this subsection, except that a contract for such services may not take effect until approved by the State Department of Agriculture as provided in subsection (6) of this section.

(2) The commission may rent space or acquire supplies and equipment from any contractor as described in subsection (1) of this section. ORS chapters 276, 278, 279A, 279B, 279C and 283 and ORS 276A.206, 279.835 to 279.855 and 283.085 to 283.092 do not apply to such rentals or acquisitions.

(3) Except as provided in this section, a contractor described in subsection (1) of this section shall be considered an independent contractor and not an employee, eligible employee, public employee or employee of the state for purposes of Oregon law, including ORS chapters 236, 238, 238A, 240, 243, 291, 292, 316 and 652.

(4) A contractor described in subsection (1) of this section shall be considered an independent contractor and not a worker for purposes of ORS chapter 656 and ORS 670.600.

(5) A contractor described in subsection (1) of this section may not be considered a public official, public officer, state officer or executive official for purposes of Oregon law, including ORS chapters 236, 244, 292, 295 and 297 and ORS 171.725 to 171.785.

(6) The State Department of Agriculture shall review the contract described in subsection (1) of this section for the adequacy of the clauses pertaining to statement of work, starting and ending dates, consideration, subcontracts, funds authorized in the budget, amendments, termination, compliance with applicable law, assignment and waiver, access to records, indemnity, ownership of work product, nondiscrimination, successors in interest, attorney fees, tax certification or merger or any other clause the department deems necessary.

(7) The Oregon Department of Administrative Services, in consultation with the State Department of Agriculture, shall adopt rules necessary for the screening and selection of independent contractors under this section.

(8) Except as provided in subsection (7) of this section, the State Department of Agriculture may promulgate any rules necessary for the administration and enforcement of this section.

576.307 Provision of state services to commission.

(1) Upon request by a commodity commission, the Oregon Department of Administrative Services may:

(a) Purchase or otherwise provide for acquiring or furnishing supplies, materials, equipment and services, other than personal services, that the commission requires and for independent contractors to furnish professional services to the commission.

(b) Provide for printing and multiple duplication work for the commission under ORS 282.010 to 282.050, except for printing and binding that advertises or promotes agricultural or manufactured products.

(c) Provide for services to the commission for disposing of surplus, obsolete or unused supplies, materials and equipment under ORS 279A.280.

(d) Provide for central telephone service and central mail or messenger services to the commission under ORS 283.140.

(e) Provide motor vehicles for use by members, officers and employees of the commission under ORS 283.305 to 283.350.

(2) A commission shall pay to the Oregon Department of Administrative Services an amount for services the department performs under subsection (1) of this section that the department determines is adequate to reimburse the department for the costs necessary to perform the services.

(3) At the commission's request, the Oregon Department of Administrative Services may design and supervise the installation of an accounting system for the commission. The commission shall pay to the Oregon Department of Administrative Services an amount for services the department performs under this subsection that the department determines is adequate to reimburse the department for the costs necessary to perform the services.

576.309 Commission furnishing services, facilities and materials to other state agencies.

A commodity commission may elect to furnish services, facilities and materials to other commodity commissions, the Oregon Wheat Commission, the Oregon Beef Council or other state agencies and officers under ORS 283.110 to carry out the purposes of ORS 576.051 to 576.455. Upon requisition by the commission, any other commodity commission, the Oregon Wheat Commission, the Oregon Beef Council or any other state agency or officer may furnish services, facilities and materials to the commission under ORS 283.110.

576.311 Commission exempt from certain financial administration laws.

Except as otherwise provided in ORS 576.051 to 576.455, ORS 291.026, 291.201 to 291.222, 291.232 to 291.260, 291.322 to 291.334, 292.210 to 292.250, 293.260 to 293.280, 293.295 to

293.346 and 293.590 to 293.640 do not apply to a commodity commission or to the administration and enforcement of ORS 576.051 to 576.455.

576.315 Grants, donations and gifts.

A commodity commission may accept grants, donations or gifts, from any source for expenditures for any purposes consistent with the powers conferred on the commission.

576.317 Intellectual property; rules.

(1) As used in this section, "intellectual property" means patents, copyrights, trademarks, inventions, discoveries, processes, ideas and other similar property, whether or not they are patentable or copyrightable.

(2) A commodity commission established under ORS 576.051 to 576.455 may, consistent with the purposes of the commission, develop intellectual property that relates to a commodity or assists in the implementation, maintenance or development of commission programs. A commodity commission may take all necessary and proper actions relating to the development of an intellectual property, including but not limited to entering into contracts and other agreements and owning, managing, disposing of or using the intellectual property. A commodity commission developing intellectual property shall adopt rules to govern the ownership, management, disposal and use of intellectual property and other activities of the commission relating to intellectual property.

(3) Moneys received by a commodity commission as a result of the commission's ownership, management, disposal or use of intellectual property, or other activities of the commission relating to intellectual property, must be deposited to an account established and maintained by the commission pursuant to ORS 576.375. Moneys deposited under this section are continuously appropriated to the commodity commission possessing the account for the purpose of carrying out the duties, functions and powers of the commission.

576.320 Commission employees not subject to state personnel compensation plans; commission not subject to office space regulation; fees for administrative services; rules.

(1) Wages or salaries of employees of a commodity commission established under ORS 576.051 to 576.455 are not subject to personnel compensation plans for state employees established by the Oregon Department of Administrative Services under ORS 240.235 to 240.250.

(2) A commodity commission established under ORS 576.051 to 576.455 is not required to utilize office space furnished or obtained by the Oregon Department of Administrative Services as provided in ORS chapter 276.

(3) The State Department of Agriculture may charge and collect from each commodity commission established under ORS 576.051 to 576.455 an assessment or fee to reimburse the department for supervisory or administrative functions the department is required by law to perform with regard to commodity commissions. The department shall establish the amount of the assessment or fee by rule.

576.322 Legislative ratification of prior actions, rules and appointments.

(1) As used in this section, “commodity commission” means a commission established under ORS 576.051 to 576.455.

(2) The Legislative Assembly declares that any action taken prior to May 13, 2013, by a commodity commission having one or more members who were not properly qualified at the time to serve on the commodity commission due to rules regulating the number or geographic representation of commodity commission members is valid and lawful to the same extent that the action would have been valid and lawful if the commodity commission had at the time of the action been in conformance with rules regulating the number and geographic representation of commodity commission members.

(3) Notwithstanding ORS 576.206 or 576.304 or any rules adopted under ORS 576.206, the Legislative Assembly ratifies and declares valid any rule adopted by a commodity commission prior to May 13, 2013, that created, amended or abolished a rule or other requirement regulating the number or geographic representation of the commodity commission members.

(4) Notwithstanding ORS 576.206 or any rules adopted under ORS 576.206 regarding the number or geographic representation of commodity commission members, the Legislative Assembly ratifies and validates the appointment prior to May 13, 2013, of any commodity commission members who would have qualified for the appointment if no applicable rules regulated the number or geographic representation of the commodity commission members. This subsection does not require the reinstatement of any member removed from a commodity commission prior to May 13, 2013, for any reason.

576.325 Levy and collection of assessments; commission rules regulating sale activities; maximum assessment rates.

(1) As used in this section, “industry average unit price” means the average unit price for the raw commodity within the industry. Unless provided otherwise, “industry average unit price” includes prices that are calculated using a one-year, two-year or three-year average and data from the most recent complete year or years preceding the year of determination.

(2)

(a) A commodity commission may assess, levy and collect an assessment, the amount of which the commission shall determine, on all units or animals of the commodity grown or produced in this state, or procured from this state’s rivers or the offshore waters, but not the Columbia River, for handling within this state, and sold in commercial channels. A commission may not apply an assessment to a transaction that occurred prior to the effective date of the commission rule adopting the assessment.

(b) A commission may assess, levy and collect a differential assessment, the amount of which the commission shall determine, based on the intended use, type or variety of the commodity.

(c) All casual sales of the commodity made by the producer direct to the consumer are exempt from the assessment.

(d) A commission may, by rule, define and regulate handling, processing and casual sales.

(3) The amount of the assessment provided for in subsection (2) of this section is limited as follows:

(a) If a commission assesses on a unit basis, the assessment may not exceed one and one-half percent of the industry average unit price. The commission may determine the industry average unit price by considering data and estimates of the United States Department of Agriculture, Oregon State University or other reliable sources.

(b) If a commission assesses on a percentage of dollar value basis, the assessment may not exceed one and one-half percent of the dollar value received by a producer for the raw commodity. If the dollar value received by a producer is not otherwise determinable, the commission may establish the dollar value based on the industry average unit price for that year for the raw commodity.

(4) Notwithstanding subsection (3) of this section:

(a) The maximum assessment by the Oregon Clover Seed Commission may not exceed one and one-half percent of the industry average unit price for products within the same market category, if assessed on a unit basis.

(b) The maximum assessments by the Oregon Albacore Commission and the Oregon Tall Fescue Commission may not exceed three percent of the industry average unit price if assessed on a unit basis or three percent of the value received by a producer for the raw commodity if assessed on a percentage of dollar value basis.

(c) The maximum assessment by the Oregon Sweet Cherry Commission for fresh, brined, canned and frozen cherries may not exceed four percent of the respective industry average unit prices for fresh, brined, canned and frozen cherries if assessed on a unit basis.

(d) The maximum assessment by the Oregon Processed Vegetable Commission on a commodity may not exceed 0.5 percent of the industry average unit price for that commodity if assessed on a unit basis or 0.5 percent of the dollar value received by a producer for the commodity if assessed on a percentage of dollar value basis.

(e) The maximum assessment by the Oregon Hop Commission may not exceed two percent of the industry average unit price if assessed on a unit basis.

(f) The assessment by the Oregon Sheep Commission may not be less than \$0.50 or more than \$1 per head. The commission may not increase the assessment by more than \$0.10 during any 12-month period. Notwithstanding subsection (2) of this section, the commission may levy the assessment on any sheep produced and sold in this state regardless of the disposition of the sheep and regardless of whether the sale is a casual sale. This paragraph does not allow the commission to apply an assessment to a transaction that occurs prior to the effective date of the rule adopting the assessment.

(5) A commission shall assess and levy an assessment under subsections (2) to (4) of this section to the producer at the time and in the manner provided by the commission by rule. The commission is the owner of a collected assessment. A person who collects an assessment holds the assessment in trust for the benefit of the commission and the state and shall remit the assessment in the time and manner required by the commission under ORS 576.335.

(6) Notwithstanding subsection (5) of this section, a commission may assess, levy and collect an assessment from a first purchaser at the time and in the manner provided by the commission by rule. Except as provided in subsection (8) of this section, the assessment may not exceed the limits described in subsections (3) and (4) of this section.

(7) A regional commission may assess, levy and collect an assessment only on the commodity produced in the counties in which the regional commission functions.

(8) Notwithstanding subsections (3) and (4) of this section, a commodity commission may assess, levy and collect an assessment in excess of the limits described in subsections (3) and (4) of this section pursuant to a federal marketing order or agreement.

(9) A person who believes that the amount of an assessment is incorrect may apply to the commission for a refund not later than 60 days after the person pays the assessment.

576.327 Exemptions from assessment; rules.

(1) A commodity commission may, by rule, establish exemptions from assessment based on:

- (a) Commodity quantities;
- (b) Types of commodity sale; and
- (c) Types of commodity producer.

(2) When adopting a rule for exemptions under subsection (1) of this section, a commission must consider:

- (a) Laws and rules of the United States and other states relating to commodity commissions, boards and marketing orders;
- (b) The practices, procedures and customs unique to the production, handling, processing and trading of a particular commodity and to the producers and growers of that commodity; and
- (c) The cost of collecting the particular assessment and practical problems relating to collection.

(3) A producer or handler that is exempted from assessment, but required to submit reports to a commission, is subject to ORS 576.351.

576.335 Report by person responsible for collecting assessment.

(1) A person responsible for collecting an assessment for a commodity commission shall make a report to the commission at the time and in the manner required by the commission.

(2) A person responsible for collecting an assessment for a commission who fails to deduct an assessment at the time of sale shall report and pay the assessment to the commission. A producer required to report and pay an assessment is subject to this section. [1953 c.489 §§24,26; 1959 c.596 §14; subsection (4) enacted as 1965 c.211 §3; 2003 c.604 §40]

576.345 Producer to make reports of and pay assessment moneys on certain sales.

(1) When a first purchaser lives or has an office in another state or is a federal or other governmental agency, the producer shall report all sales made to the purchaser on forms

provided by the appropriate commodity commission and pay the assessment moneys directly to the commission, unless the first purchaser voluntarily makes the proper deduction and remits the proceeds to the commission.

(2) If a producer performs the handling or processing functions on all or a part of the production of the commodity that normally would be performed by another person as first purchaser, the producer shall report sales of the commodity from the production of the producer on forms provided by the appropriate commodity commission and pay the assessment moneys directly to the commission, unless the first purchaser voluntarily makes the proper deduction and remits the proceeds to the commission.

576.350 [1957 c.447 §18; repealed by 1959 c.596 §90]

576.351 Records of person required to pay or collect assessment; inspections and audits.

(1) Each person required to pay or collect an assessment on a commodity under ORS 576.051 to 576.455 shall keep accurate records sufficient to enable a commodity commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission.

(2) For purposes of determining the accuracy of assessments paid or due to a commission, the commission or a person authorized by the commission may:

(a) Make an inspection during normal business hours of the business premises of a person required to pay or collect an assessment; and

(b) Audit the records of a person required to pay or collect an assessment.

(3) For purposes of determining the accuracy of assessments paid or due to a commission, the commission may issue a subpoena for the production of any books, records or documents related to the payment or collection of an assessment to a person required to pay or collect the assessment.

(4) If an audit determines that a person is delinquent in the payment or collection of an assessment, the person shall pay the cost of the audit, not to exceed an amount equal to the delinquent assessment.

576.355 Penalty for delaying transmittal of funds.

(1) In addition to the penalties prescribed in ORS 576.991, any person who delays transmittal of funds beyond the time set by a commodity commission shall pay a penalty of 10 percent of the amount due and shall also pay one and one-half percent interest per month on the unpaid balance of the assessment.

(2) A commission may waive the penalty and interest described in subsection (1) of this section upon a showing of good cause.

(3) Notwithstanding subsection (1) of this section, if an assessment is collected pursuant to a federal marketing order or agreement, a commission may establish a penalty or interest rate that is consistent with that order or agreement.

576.365 Penalty for failure to relinquish assessment moneys to commission; civil action or other remedies.

(1) If any person responsible for the transmittal of assessment moneys to a commodity commission fails to relinquish assessment moneys collected, the person shall pay a penalty equal to twice the amount of the unrelinquished assessment moneys.

(2) A commission may commence a civil action or utilize any other available legal or equitable remedy to collect an assessment or civil penalty, obtain injunctive relief or obtain specific performance under ORS 576.051 to 576.455.

(3) If the person responsible for the transmittal of assessment moneys is a corporation, all directors and officers of the corporation are personally liable for a failure to relinquish the assessment moneys collected by the corporation.

(4) If a commission obtains a favorable judgment in an action or suit under subsection (2) of this section, the court shall award the commission costs and reasonable attorney fees.

(5) Unless the person required to pay an assessment and the person responsible for collecting the assessment are related businesses, the commission may not collect from the person required to pay the assessment any amount deducted by the person responsible for collecting the assessment and due and owing to the commission.

576.370 Disputes over assessment amounts; rules governing disputes and establishing assessment periods.

(1) A commodity producer may dispute the amount of a commodity assessment levied against the producer on a unit basis under ORS 576.325 if the total assessment levied against the producer during an assessment period established by commodity commission rule exceeds the total dollar value received by the producer for the raw commodity during that assessment period multiplied by the maximum lawful assessment percentage.

(2) A commodity producer who disputes the amount of a commodity assessment as provided under subsection (1) of this section must file any challenge to the assessment with the appropriate commodity commission no later than 60 days after the close of the assessment period. The challenge must be on a form provided by the State Department of Agriculture. A commodity commission shall process a challenge under this section as provided by rules adopted under subsection (4) of this section.

(3) A commodity producer filing a challenge under this section bears the burden of proving the total dollar value received by the producer during the assessment period. If the producer acts as a handler or processor for all or part of the producer's commodity production, the producer also bears the burden of proving that the prices paid to the producer are equivalent to prices paid in arm's-length transactions. A commodity commission shall refund the amount of the assessment that the producer proves is in excess of the total dollar value received by the producer for the raw commodity during the assessment period multiplied by the maximum lawful assessment percentage.

(4) The department shall adopt necessary and proper uniform rules for commodity commissions to carry out this section. The department rules shall include, but need not be limited to, procedures for the filing, processing and formal or informal resolution of challenges and for

determining commodity prices paid in arm's-length transactions. A commodity commission shall adopt rules establishing assessment periods and may adopt supplemental rules that do not conflict with the rules of the department.

576.372 Authority of Oregon Alfalfa Seed Commission to adopt rules authorizing refunds; effect.

(1) In addition to any refund permitted under ORS 576.325, the Oregon Alfalfa Seed Commission may adopt rules that provide for the commission to refund all or part of a commodity assessment levied by the commission upon request of the person paying the assessment. A rule adopted under this subsection may not provide for the commission to refund an amount less than the portion of the assessment used by the commission for advertising and product promotion.

(2) If the commission adopts rules pursuant to subsection (1) of this section:

(a) Plans and projects recommended by the commission are exempt from State Department of Agriculture review and approval or disapproval under ORS 576.066 (2); and

(b) Notwithstanding ORS 576.206, the commission may vote to eliminate the position for a commissioner who is a member of the public. [2003 c.604 §22; 2003 c.604 §23; 2007 c.55 §3;

576.375 Payment of commission moneys to authorized agent; financial transactions.

(1) Moneys a person collects or receives from the assessment levied under the authority of ORS 576.325 and other moneys a commodity commission receives must be paid to the authorized agent of the commission and promptly deposited into an account established by the commission in accordance with ORS 295.001 to 295.108. All moneys in the account are continuously appropriated to the commission that makes the deposit for the purpose of carrying out the commission's duties, functions and powers.

(2) Moneys may not be withdrawn from or paid out of the account except upon order of the commission, and upon checks or other orders upon such accounts signed by the secretary-treasurer or such other member of the commission as the commission designates and countersigned by such other member, officer or employee of the commission as the commission designates. The commission shall keep a receipt, voucher or other written record, showing clearly the nature and items covered by each check or other order.

(3) Subject to approval by the Director of Agriculture, a commission may invest moneys the commission collects or receives. Investments a commission makes are:

(a) Limited to investments described in ORS 294.035;

(b) Subject to the investments maturity date limitations described in ORS 294.135; and

(c) Subject to the conduct prohibitions listed in ORS 294.145.

(4) Interest earned from any moneys a commission invests under subsection (3) of this section is available to the commission in a manner consistent with the commission's annual budget.

576.380 [1957 c.447 §16; repealed by 1959 c.596 §90]

576.385 Bond or letter of credit required of person authorized to receive or disburse commission moneys.

Any person authorized by a commodity commission to receive or disburse moneys as provided in ORS 576.375 shall file with the commission a fidelity bond executed by a surety company authorized to do business in this state or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008. The bond or letter of credit must be in favor of the commission and the State of Oregon, in an amount equal to the maximum amount of moneys the commission determines the person will have subject to control at any one time and upon such conditions as the commission shall prescribe. The commission shall pay the cost of the bond or letter of credit.

576.390 [1957 c.447 §15; repealed by 1959 c.596 §90]

576.391 [1959 c.596 §73; repealed by 2003 c.604 §10 (576.392 enacted in lieu of 576.391)]

576.392 Cancellation of uncollectible assessment; subsequent collection.

A commodity commission may cancel an uncollectible assessment consistent with ORS 293.240. Subsequent collection of debt written off under ORS 293.240 is governed by ORS 293.245.

576.395 Books, records and accounts of commission.

Each commodity commission shall keep accurate books, records and accounts of all its dealings, which shall be open to inspection and audit by the Secretary of State.

576.405 [1953 c.489 §36; repealed by 2003 c.604 §109]

576.410 "Fiscal year" defined. As used in ORS 576.413 to 576.445, "fiscal year":

(1) Except as provided in subsection (2) of this section, means the 12-month period commencing on July 1 and ending on June 30.

(2) If adopted by a commodity commission rule that has taken effect as provided under ORS 576.413, means the 12-month period commencing on January 1 and ending on December 31.

576.413 Adoption of calendar year as fiscal year.

(1) A commodity commission may adopt a rule allowing the commission to operate using a fiscal year that begins January 1 and ends December 31 each year. A commission shall consult with the Director of Agriculture and the Department of Justice prior to adopting a rule described in this section. A rule described in this section may not take effect unless:

(a) The commission obtains any necessary approvals from taxing authorities to use a fiscal year that begins January 1 and ends December 31 when reporting information;

(b) The commission submits a recommendation regarding any plans and projects for the transition period of July 1 to December 31 to the director for review and approval as described in ORS 576.066; and

(c) Notwithstanding the annual basis requirement in ORS 576.416 (1), the commission prepares, submits for public comment, adopts and receives approval for a budget for the transition period as provided under ORS 576.416 (2) to (7).

(2) A recommendation submitted under ORS 576.066 regarding plans and projects for the transition period must be separately stated and presented for separate review and approval from any recommendation submitted under ORS 576.066 regarding plans and projects for the subsequent fiscal year.

(3) A budget prepared for a transition period must be submitted for public comment, adopted and approved separately from the budget prepared for the subsequent fiscal year. ORS 576.416 and this subsection do not prohibit a commission from submitting a transition period budget and fiscal year budget for separate public comment or adoption at the same public meeting.

(4) This section does not authorize the use of a fiscal year that begins January 1 and ends December 31 by any entity that:

(a) Receives funding from the State Treasury; or

(b) Is subject to budget review or modification by the Legislative Assembly. [2013 c.12 §2]

576.415 [1959 c.596 §§22, 23; 1977 c.198 §12; 1993 c.98 §18; repealed by 2003 c.604 §13 (576.416 enacted in lieu of 576.415)]

576.416 Preparation of commission budget; annual financial statement.

(1) A commodity commission shall adopt a budget on an annual basis using classifications of expenditures and revenues required by ORS 291.206. The budget is not subject to review by the Legislative Assembly or to future modification by the Emergency Board or the Legislative Assembly.

(2) A commission shall follow generally accepted accounting principles and keep financial and statistical information as necessary to completely and accurately disclose the financial operations of the commission as may be required by the Secretary of State. In addition, the budget must show the estimated receipts and expenditures by or under the authority of the commission under ORS 576.051 to 576.455 for the fiscal year for which the budget is adopted. The budget also must show the actual receipts and expenditures by or under the authority of the commission for the fiscal year preceding the fiscal year in which the proposed budget is prepared, if any, and the estimated receipts and expenditures by or under the authority of the commission for the fiscal year in which the budget is prepared, if any.

(3) Estimated receipts and expenditures for the fiscal year for which the budget is adopted must be fully itemized and be prepared and arranged to clearly show each item of receipts and expenditures. To the extent practicable, the items of receipts and expenditures must be arranged under major groups or categories that are the same as the most recent classifications of revenue and expenditures established pursuant to ORS 291.206.

(4) The budget shall contain only one estimate for emergency or other expenditures that are unforeseen at the time the budget is prepared.

(5) A commission shall call and hold at least one public meeting upon the proposed budget. In selecting a time and place for a meeting, a commission shall be guided by consideration for the

convenience of the majority of the producers of the commodity. At a meeting, any person has a right to be heard with respect to the proposed budget.

(6) At least 14 days prior to the date of a meeting under subsection (5) of this section, a commission shall publish notice at least once in a newspaper of general circulation in this state. The notice must set forth the purpose, time and place of the meeting and state that a copy of the proposed budget is available for public inspection at the place of business of the commission or at another convenient location.

(7) After a budget has been adopted, a commission shall submit to the Director of Agriculture a copy of the budget and an affidavit setting forth the pertinent facts relating to the preparation and adoption of the budget. The director shall examine the budget and the affidavit within 15 days and, if the director determines that the estimated receipts and expenditures in the budget are in conformity with the authority of the commission and other applicable statutory requirements and that the facts set forth in the affidavit indicate that the budget was prepared and adopted in accordance with the law, the director shall certify those determinations on the copy of the budget and make the budget final. If the director determines that the budget fails to meet the requirements in any respect, the director shall immediately notify the commission of the particular failures. The commission shall promptly take all practicable measures to remedy the failures and shall resubmit a copy of the budget to the director for examination. The director shall retain the certified copy of the final budget and make the budget available for public inspection during normal business hours of the State Department of Agriculture.

(8) A commission shall prepare an annual financial statement of commission revenues and expenses and shall make the statement available for public review. A commission shall provide a copy of the statement to the department no later than 30 days after the end of the state fiscal year. Upon request of the Secretary of State, a commission shall provide a copy of the statement to the secretary. [2003 c.604 §14 (enacted in lieu of 576.415); 2015 c.17 §2]

576.420 Expenditures prohibited unless budget procedure complied with.

An expenditure of moneys for a fiscal year may not be made or incurred by or under the authority of a commodity commission under ORS 576.051 to 576.455 unless the commission complies with ORS 576.416.

576.425 [1959 c.596 §25; repealed by 2003 c.604 §109]

576.430 [1959 c.596 §26; 1977 c.198 §13; 1993 c.98 §19; repealed by 2003 c.604 §109]

576.435 [1959 c.596 §27; 2003 c.734 §17; repealed by 2003 c.604 §109]

576.440 Limitation on expenditures.

(1) Except as otherwise provided in subsection (2) of this section, an expenditure of moneys for a fiscal year may not be made or incurred by or under the authority of a commodity commission under ORS 576.051 to 576.455:

(a) In excess of the total amount of expenditures estimated for the fiscal year in the budget adopted for the fiscal year or in excess of the total amount of expenditures estimated for the major group or category of the expenditure for the fiscal year in the budget adopted for the fiscal year.

(b) For any purpose different than that indicated by the major group or category of the expenditure in the budget adopted for the fiscal year.

(2) An expenditure of moneys for a fiscal year unforeseen at the time the budget is prepared may not be made or incurred by or under the authority of the commission under ORS 576.051 to 576.455 in excess of the amount of unforeseen expenditures estimated as provided in ORS 576.416.

576.445 Unforeseen expenditures.

(1) Subject to ORS 576.440 (2), expenditures of moneys for a fiscal year unforeseen at the time the budget of a commodity commission is prepared may be made or incurred by order of the commission. The order must indicate the amount and purpose of the expenditure and why the expenditure was unforeseen. At least one copy of the order must be filed in the office of the commission and available for public inspection during normal business hours of the commission.

(2) The commission shall send a copy of the order to the Director of Agriculture. The director shall examine the order and the budget to which the order relates. The director shall certify the order if the director determines that the form of the order is in accordance with law, that the facts set forth in the order and the budget to which the order relates indicate that the order is in accordance with law, and that the proposed unforeseen expenditure is appropriate to accomplish the goals and needs of the commission. The director shall immediately notify the commission if the director determines that the order is defective because of a failure to comply with ORS 576.416, because the final budget or the preparation or adoption of the final budget is defective or because estimated expenditures are not in conformity with statutory requirements. The commission shall promptly take all practicable steps to remedy the defects. The director shall retain the certified copy of the order and make the copy available for public inspection during normal business hours of the State Department of Agriculture.

576.450 [1959 c.596 §30; repealed by 2003 c.604 §109]

576.455 Moneys of abolished commission.

(1) Unless the Legislative Assembly orders a refund pursuant to subsection (2) of this section, if the Legislative Assembly abolishes a commodity commission, any moneys remaining in the possession of the abolished commission on the effective date of the abolishment are transferred to Oregon State University and are continuously appropriated to the university for research benefiting producers of the commodity that was subject to assessment by the abolished commission.

(2) The Legislative Assembly may order in an Act dissolving a commodity commission that any moneys remaining in the possession of the abolished commission on the effective date of the abolishment be refunded on a proportional basis to the persons who paid assessments to the commodity commission during the assessment year in which the commodity commission was abolished.

576.505 [1953 c.489 §31; 1957 c.447 §21; 1959 c.596 §77; repealed by 2003 c.604 §109]

576.515 [1953 c.489 §32; repealed by 1959 c.596 §90]

576.525 [1953 c.489 §33; repealed by 2003 c.604 §109]

576.555 [1959 c.596 §78; 1965 c.515 §7; 1977 c.198 §15; 2001 c.504 §5; repealed by 2003 c.604 §109]

576.565 [1959 c.596 §79; repealed by 2003 c.604 §109]

576.570 [1965 c.515 §6; 1977 c.198 §16; repealed by 2003 c.604 §109]

576.575 [1959 c.596 §80; repealed by 2003 c.604 §109]

576.578 [1971 c.486 §2; 1987 c.180 §1; 1993 c.281 §1; repealed by 2003 c.604 §109]

576.580 [1971 c.486 §3; 1987 c.180 §2; 1993 c.281 §2; repealed by 2003 c.604 §109]

576.582 [1971 c.486 §4; 1993 c.281 §3; repealed by 2003 c.604 §109]

576.584 [1971 c.486 §5; repealed by 2003 c.604 §109]

576.585 [1965 c.211 §2; repealed by 2003 c.604 §109]

576.595 Sales are in commercial channels.

Any sale of a commodity by a grower or producer is a sale in commercial channels for the purposes of ORS 576.051 to 576.455 and 576.991 (2).

576.610 Definitions for ORS 576.610 to 576.650. As used in ORS 576.610 to 576.650, unless the context requires otherwise:

(1) "Agricultural commodity" means any agricultural, horticultural or viticultural product, but does not include milk, timber or timber products.

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

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

(4) "Handler" means any person who purchases an agricultural commodity and thereafter grades, packs, cans, freezes, distills, crushes or otherwise preserves or changes the form of the commodity for the purpose of marketing the commodity.

(5) "Producer" means a person engaged in the business of growing, raising or otherwise producing an agricultural commodity for sale or an association of such persons organized under ORS chapter 62.

(6) "Representative group of producers" means those producers who produced, in the previous crop season, more than 59 percent of the amount of the commodity handled by each separate handler with whom such producers are involved in a dispute.

576.620 Department to perform mediation services; employees; qualifications.

In addition to such other duties as may be prescribed by law, the State Department of Agriculture shall perform mediation services for producers and handlers involved in agricultural marketing disputes in the manner provided in ORS 576.610 to 576.650. Subject to any applicable provision of the State Personnel Relations Law, the Director of Agriculture may appoint such employees as the director considers necessary to perform the mediation services required by ORS 576.610 to 576.650. In addition to or in place of any permanent employees appointed to perform mediation services, the director may appoint persons, on a temporary basis, to perform such services. Such temporary employees serve at the pleasure of the director, and need not be members of the classified service, as defined in ORS 240.210. The director may set the hours, salaries, expense allowances and other terms and conditions of employment of such temporary employees. Any person designated to act for the director in a mediation proceeding shall be a disinterested person who is not a producer or handler of the commodity involved in the dispute, or interested in the ownership or management of such a producer or handler.

576.630 Request for mediation; meeting with parties.

Whenever a representative group of producers of an agricultural commodity are unable to reach an agreement on price or other marketing term with a handler, either side may request in writing mediation assistance from the State Department of Agriculture in settling the dispute. Not later than 10 days after receiving such a request for assistance, the department shall meet with the parties to the dispute and shall assist the parties in attempting to reach a settlement.

576.640 Rules.

In accordance with ORS chapter 183, the State Department of Agriculture may promulgate rules to carry out ORS 576.610 to 576.650.

576.650 Cooperation by state agencies.

All governmental agencies and officers shall cooperate with the State Department of Agriculture and furnish such information and advice as the department considers necessary for the performance of its mediation services.

576.700 Definitions for ORS 576.700 to 576.710. As used in ORS 576.700 to 576.710:

(1) "Commodity" has the meaning for that term provided in ORS 576.051.

(2) "Processor" means any person who purchases, offers to purchase or contracts to purchase in this state any commodity from a producer or an agent of a producer for the purpose of packaging, processing or marketing such commodity. "Processor" does not include any cooperative, formed pursuant to ORS chapter 62.

(3) "Producer" means any person other than a processor who produces a commodity in this state for commercial purposes.

(4) "Meat animal" has the meaning for that term provided in ORS 603.010. [1971 c.531 §1; 1975 c.703 §8]

576.705 Processors required to pay for commodities within 30 days after delivery; interest on late payments.

Notwithstanding any other provision of law:

(1) In the absence of a contract providing otherwise, any processor who purchases a commodity from a producer shall make full payment therefor not later than the 30th day after the day the processor takes delivery of the harvested commodity.

(2) Any processor who fails to make payment as required by subsection (1) of this section shall pay, in addition to the amount due, interest thereon at the rate of one percent per month.

576.710 Applicability of ORS 576.705. ORS 576.705 does not apply to any processor:

(1) That purchases from a producer seed that requires cleaning and germination tests;

(2) That arranges for the production of agricultural seed under a contract that is subject to ORS 576.718 or 576.721;

(3) Of sugar beets whose contract with a producer for sale of the crop provides for profit sharing;

(4) Of fish or seafood products; or

(5) Of meat animals.

576.715 Definitions for ORS 576.715 to 576.744. As used in ORS 576.715 to 576.744:

(1) "Agricultural seed" means grass seed of a type commonly sold for use in turf lawns or as forage seed.

(2) "Authenticate" has the meaning given that term in ORS 79.0102.

(3) "Producer" means a person that grows agricultural seed in this state on a commercial basis for a seed dealer.

(4) "Seed bailment contract" means a seed production contract under which the seed dealer retains title to all seed, seed stock and plant life grown or used by the producer under the terms of the contract.

(5) "Seed dealer" means a person that in the ordinary course of business contracts to buy agricultural seed grown in this state by a producer or contracts with a producer for the growing of agricultural seed in this state.

(6) "Seed delivery" means the date on which the seed grower delivers grass seed to the seed dealer pursuant to a notice from the dealer.

(7) "Seed grower" means a person that grows grass seed in this state on a commercial basis without entering into a contract with a seed dealer prior to harvesting of the seed.

(8) "Seed production contract" means a written agreement between a producer and a seed dealer for the growing of agricultural seed in this state.

(9) "Seed purchase contract" means a written agreement for a seed dealer to purchase grass seed that has been grown by a seed grower. "Seed purchase contract" does not include a seed production contract.

(10) "Variety Not Stated Seed" means agricultural seed that is sold in unmarked plastic bags or other unmarked containers without any reference to a variety name for the seed.

576.718 Seed production contract terms.

(1) The following terms apply to seed production contracts:

(a) If the contract does not settle the price of the agricultural seed, the contract is enforceable and the price shall be determined as described in ORS 72.3050 (1) to (3).

(b) Except as provided in ORS 576.721 (1) or (3), payment to the producer is due no later than the earliest of the following:

(A) The dates specified in the contract.

(B) Thirty days after delivery of the seed.

(C) May 1 of the calendar year following the harvesting of the seed.

(c) Unless expressly provided otherwise in a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed, the risk of loss and the responsibility for the payment of storage fees transfer from the producer to the seed dealer upon the earlier of:

(A) The delivery of the seed to the seed dealer pursuant to a notice from the seed dealer; or

(B) The delivery to the seed dealer of test results establishing that the seed meets quality standards set forth in the contract.

(d) Unless expressly provided otherwise in a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed, the minimum period for an initial contract is two years. This paragraph does not establish a minimum period for an extension or renewal that follows an initial contract period.

(2) It is an implied condition of any price or payment requirement described in subsection (1) of this section that the producer is performing, or has completed performance, in accordance with the seed production contract and has not otherwise breached the contract.

(3) Except as provided in subsection (5) of this section, a seed production contract described in this section may contain any additional terms agreed to by the parties.

(4) If a seed production contract is extended or renewed, for the extension or renewal period the parties may:

(a) Subject to paragraph (b) of this subsection, continue the terms of the original contract or agree to new or different contract terms; and

(b) Agree to payment due date terms as provided under this section or under ORS 576.721 (3).

(5) A seed production contract may not:

(a) Provide for exclusive venue or jurisdiction in another state;

(b) Provide for the terms of the contract to be interpreted under the laws of another state;

(c) Waive the application of ORS 576.715 to 576.744 to the contract; or

(d) Authorize a unilateral material modification of the contract.

(6) Subject to ORS 72.2010, subsections (1) and (5) of this section also apply to a nonwritten agreement for the production of agricultural seed.

(7) A term in a seed production contract that conflicts with subsection (1) or (5) of this section is void as a matter of public policy.

576.721 Payment due date provisions in contracts authenticated prior to planting.

(1) A seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed may contain payment due date terms that differ from the payment due date terms described in ORS 576.718 (1)(b) if the contract:

(a) Provides for the price of the seed to be determined no later than March 15 of the calendar year following harvesting of the seed;

(b) Requires the seed dealer to make a partial payment no later than March 15 of the calendar year following harvesting of the seed that is at least 40 percent of the full payment amount; and

(c) States the date by which final payment for the seed is due.

(2) If a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed does not contain each provision, requirement and statement described in subsection (1)(a) to (c) of this section, notwithstanding any contrary payment due date terms stated in the contract, the payment due date terms of the contract are subject to ORS 576.718 (1)(b).

(3) An extension or renewal of any seed production contract, regardless of when the contract was authenticated, may contain payment due date terms that differ from the payment due date terms described in ORS 576.718 (1)(b) if the extension or renewal contains the provision, requirement and statement described in subsection (1)(a) to (c) of this section. If an extension or renewal of a seed production contract does not contain each provision, requirement and statement described in subsection (1)(a) to (c) of this section, notwithstanding any contrary payment due date terms stated in the extension or renewal, the payment due date terms for the extension or renewal are subject to ORS 576.718 (1)(b).

(4) It is an implied condition of any payment requirement created as provided under this section that the producer is performing, or has completed performance, in accordance with the seed production contract and has not otherwise breached the contract.

576.725 [2001 c.265 §1; repealed by 2011 c.356 §18]

576.726 Title; bailments; liens.

(1) A seed bailment contract or seed purchase contract does not create a possessory security interest in goods under ORS chapter 79. For a seed bailment contract, filing, recording or notice of the contract is not a requirement for establishing, during the term of the contract, the validity of the contract or for establishing and confirming in the seed dealer the title to all seed, seed stock and plant life grown or used by the producer under the terms of the contract.

(2) Payments due from a seed dealer to a producer under the terms of a seed bailment contract, or due to a seed grower under the terms of a seed purchase contract, are subject to lien under ORS 87.226 and to security interests perfected as provided under ORS chapter 79.

576.727 [2001 c.265 §2; repealed by 2011 c.356 §18]

576.729 Seed purchase contract terms.

(1) The terms of a seed purchase contract must include:

- (a) The estimated date for seed delivery;
- (b) The terms and estimated date for the seed dealer to pay the seed grower;
- (c) The amount of grass seed to be purchased; and
- (d) The species, cultivars and quality standards of the grass seed to be purchased.

(2) If the seed purchase contract does not settle the price of the grass seed, the contract is enforceable and price shall be determined as described in ORS 72.3050 (1) to (3). A seed purchase contract must require the seed dealer to make payment to the seed grower within 30 days after seed delivery. However, upon written mutual agreement of the seed grower and the seed dealer, the grower may extend the period available for the dealer to make payment.

576.732 Contract modification; damages for breach.

(1) A party to a seed production contract or seed purchase contract may not, as a condition of performance, require the other party to agree to a material modification of the contract. A contract modification obtained in violation of this subsection is unenforceable.

(2) In any action to recover damages for breach of a seed production contract or seed purchase contract, if the court finds that a party to the contract failed to act in good faith as defined in ORS 71.2010, the court may award the prevailing party court costs and reasonable attorney fees.

576.735 Seed not meeting quality standards.

(1) If testing as provided under a seed production contract establishes that agricultural seed does not meet the quality standards set forth in the contract, the producer may at any time send the test results to the seed dealer and inquire whether the seed dealer intends to purchase the seed. If, within 30 days after the seed dealer receives the test results and inquiry from the producer, the seed dealer delivers a response informing the producer that the seed dealer intends to purchase the seed, the response is an accord that forms a seed purchase contract for the seed purchased under this subsection. Except as provided in this subsection regarding price, the parties may establish the terms of the seed purchase contract as provided under ORS 576.729. The price of the seed that is subject to the seed purchase contract shall be:

- (a) Any price stated in the seed production contract for seed not meeting quality standards;
- (b) If not determined by the seed production contract, any price agreed to by the parties;
or

(c) If not determined by the seed production contract or by agreement, the market price for seed of the same kind and quality as the produced seed. However, a seed price established by the use of market price may not exceed any price established in the seed production contract for seed that meets quality standards.

(2) An accord that creates a seed purchase contract under subsection (1) of this section does not affect the terms of a seed production contract for any seed that was not described in the test results and inquiry sent by the producer.

(3) A producer may send test results and make an inquiry under subsection (1) of this section in any manner that documents seed dealer receipt of the test results and inquiry. A seed dealer may send a response under subsection (1) of this section to a producer in any manner that documents producer receipt of the response.

(4) If, within 30 days after the seed dealer receives the test results and inquiry from the producer, the seed dealer has not delivered a response informing the producer that the seed dealer intends to purchase the seed, the seed dealer is deemed to have refused purchase of the seed and to have authorized the producer to sell the seed in a commercially reasonable manner as "Variety Not Stated Seed." This subsection does not authorize the sale of any seed, seed stock or plant life of a protected variety grown or used by the producer other than a sale of seed as "Variety Not Stated Seed." The remedy provided under this subsection is in addition to any other remedy available to a producer by law. An authorization for sale arising under this subsection is in addition to any other conditional or unconditional authorization for sale that a seed dealer may grant to a producer.

576.738 Seed dealer failure to timely make payment; fee.

(1) If a seed dealer fails to pay a producer for agricultural seed when payment is due under a seed production contract or fails to pay a seed grower for grass seed when payment is due under a seed purchase contract, the producer or seed grower may notify the State Department of Agriculture. Upon notification by a producer or seed grower, the department shall determine whether payment has been made when due. If the department determines that the seed dealer has not made a payment that is due under a seed production contract or seed purchase contract, the department shall notify the seed dealer in writing that the dealer has 30 days to pay the producer or seed grower all delinquent amounts plus interest on each delinquent amount at the rate of one percent per month simple interest from the final payment date for that delinquent amount.

(2) A seed production contract or seed purchase contract may not vary the terms of the remedy provided by this section. A seed dealer may appeal the notice given by the department under this section as provided in ORS chapter 183. This section does not prevent a producer or seed grower from filing a notice of lien against a seed dealer.

(3) If a seed dealer fails to make payment as required by a notice given by the department under this section, the department shall suspend any seed dealer license issued to the dealer until the dealer demonstrates to the satisfaction of the department that the dealer is current on all payments due to all producers and seed growers. An order suspending a license under this subsection is subject to ORS chapter 183. However, the department may not suspend a seed dealer license under this section using the procedure described in ORS 183.430 (2).

(4) A seed dealer that fails to make payment on a seed production contract or seed purchase contract as required by a notice given by the department under this section is considered to have authorized the producer or seed grower to sell in a commercially reasonable manner any seed from the contract that is still in the possession of the producer or seed grower. This subsection does not prevent a seed dealer from giving consent to the producer or seed grower by other means and does not supersede the terms of a consent given by other means.

(5) The department may charge a producer or seed grower a fee, not to exceed \$50, for determining whether payment has been made in accordance with the terms of a seed production contract or seed purchase contract. The department may charge a producer or seed grower a fee, not to exceed \$200, for notifying a seed dealer in writing regarding the deadline for payment of delinquent amounts plus interest.

576.741 Seed dealer financial assurance; rules; license refusal; agents.

(1) As used in this section:

(a) "Officer" means any of the following individuals:

(A) A president, vice president, secretary, treasurer or director of a corporation.

(B) A general partner in a limited partnership.

(C) A manager in a manager-managed limited liability company.

(D) A member of a member-managed limited liability company.

(E) A trustee.

(F) An individual that is an officer as defined by the State Department of Agriculture by rule. A definition of "officer" adopted by department rule may include individuals not listed in this paragraph who may exercise substantial control over a business.

(b) "Owner" means:

(A) A sole proprietor of, partner in or holder of a controlling interest in an applicant; or

(B) Any person that is an owner as defined by the department by rule.

(2) The State Department of Agriculture may adopt rules to require, as a condition of issuing a seed dealer license under ORS 633.700, that each seed dealer provide the department financial assurance for the performance by the seed dealer under any seed production contract or seed purchase contract entered into by the seed dealer.

(3) The department may refuse to issue a seed dealer license to an applicant if the applicant, any owner or officer of the applicant or any individual exercising substantial control over the seed industry activities of the applicant:

(a) Is a seed dealer for which the license has been suspended under ORS 576.738;

(b) Is or was an owner or officer of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended under ORS 576.738; or

(c) Was an individual who exercised substantial control over the seed industry activities of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended under ORS 576.738.

(4) An agent that enters into a seed production contract on behalf of a seed dealer is conclusively presumed to have actual authority to establish the performance obligations of the seed dealer under the contract.

576.744 Rules; mediation services.

(1) The Director of Agriculture may adopt rules for the administration and enforcement of ORS 576.715 to 576.744.

(2) The director may make mediation services available through the State Department of Agriculture for the resolution of seed production contract disputes and seed purchase contract disputes.

576.747 Reporting adoption of rules regarding dealer financial assurance.

If the State Department of Agriculture adopts a rule described in ORS 576.741 (2), the department shall report to the next regular session of the Legislative Assembly following the rule adoption regarding the contents of the rule and the matters considered by the department in developing the rule.

576.750 [1977 c.690 §1; 1983 c.651 §1; 1995 c.301 §32; 2003 c.797 §25; 2005 c.22 §404; renumbered 576.850 in 2019]

576.751 [2003 c.797 §2; renumbered 576.853 in 2019]

576.753 [2003 c.797 §3; renumbered 576.856 in 2019]

576.755 [1977 c.690 §2; 1983 c.651 §2; 1987 c.804 §2; repealed by 2003 c.797 §28]

576.756 [2003 c.797 §7; renumbered 576.859 in 2019]

576.759 [2003 c.797 §5; 2005 c.22 §405; renumbered 576.862 in 2019]

576.760 [1977 c.690 §3; 1983 c.651 §3; 1987 c.804 §4; repealed by 2003 c.797 §28]

576.763 [1985 c.117 §2; 2003 c.797 §26; renumbered 576.865 in 2019]

576.765 [1977 c.690 §6; 1983 c.651 §5; 1987 c.804 §3; 1997 c.249 §185; repealed by 2003 c.797 §28]

576.766 [2003 c.797 §6; 2005 c.22 §406; renumbered 576.868 in 2019]

576.768 [2003 c.797 §11; 2005 c.22 §407; 2009 c.762 §88; 2013 c.768 §145b; 2015 c.366 §95; 2015 c.767 §205; renumbered 576.871 in 2019]

576.771 [2003 c.797 §8; renumbered 576.874 in 2019]

576.775 [2003 c.797 §10; 2005 c.22 §408; renumbered 576.877 in 2019]

576.780 Definitions for ORS 576.780 to 576.809. As used in ORS 576.780 to 576.809:

(1) "Authenticate" has the meaning given that term in ORS 79.0102.

(2)

(a) "Other seed," except as provided in paragraph (b) of this subsection, means seed or a mixture of seed grown for commercial purposes.

(b) "Other seed" does not include:

(A) Agricultural seed as defined in ORS 576.715 or a mixture containing agricultural seed.

(B) Any seed or mixture of seed that the Director of Agriculture excludes by rule in response to a request by a producer organization or other producer group.

(C) Seed or a mixture of seed produced or processed under ORS 475B.785 to 475B.949.

(3) "Producer" means a person that grows other seed in this state on a commercial basis for a seed dealer.

(4) "Seed bailment contract" means a seed production contract under which the seed dealer retains title to all seed, seed stock and plant life grown or used by the producer under the terms of the contract.

(5) "Seed dealer" means a person that in the ordinary course of business contracts to buy other seed grown in this state by a producer or contracts with a producer for the growing of other seed in this state.

(6) "Seed delivery" means the date on which the seed grower delivers other seed to the seed dealer pursuant to a notice from the dealer.

(7) "Seed grower" means a person that grows other seed in this state on a commercial basis without entering into a contract with a seed dealer prior to harvesting of the seed.

(8) "Seed production contract" means a written agreement between a producer and a seed dealer for the growing of other seed in this state.

(9) "Seed purchase contract" means a written agreement for a seed dealer to purchase other seed that has been grown by a seed grower. "Seed purchase contract" does not include a seed production contract.

(10) "Variety Not Stated Seed" means other seed that is sold in unmarked plastic bags or other unmarked containers without any reference to a variety name for the seed.

576.783 Terms of seed production contract.

(1) The following terms apply to seed production contracts:

(a) If the contract does not settle the price of the other seed, the contract is enforceable and the price shall be determined as described in ORS 72.3050 (1) to (3).

(b) Except as provided in ORS 576.786 (1) or (3), payment to the producer is due no later than the earliest of the following:

(A) The dates specified in the contract.

(B) Thirty days after seed delivery.

(C) July 1 of the calendar year following the harvesting of the seed.

(c) Unless expressly provided otherwise in a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the other seed, the risk of loss and the responsibility for the payment of storage fees transfer from the producer to the seed dealer upon the earlier of:

(A) The delivery of the seed to the seed dealer pursuant to a notice from the seed dealer; or

(B) The delivery to the seed dealer of test results establishing that the seed meets quality standards set forth in the contract.

(2) It is an implied condition of any price or payment requirement described in subsection (1) of this section that the producer is performing, or has completed performance, in accordance with the seed production contract and has not otherwise breached the contract.

(3) Except as provided in subsection (5) of this section, a seed production contract described in this section may contain any additional terms agreed to by the parties.

(4) If a seed production contract is extended or renewed, for the extension or renewal period the parties may:

(a) Subject to paragraph (b) of this subsection, continue the terms of the original contract or agree to new or different contract terms; and

(b) Agree to payment due date terms as provided under this section or under ORS 576.786 (3).

(5) A seed production contract may not:

(a) Provide for exclusive venue or jurisdiction in another state;

(b) Provide for the terms of the contract to be interpreted under the laws of another state;

(c) Waive the application of ORS 576.780 to 576.809 to the contract; or

(d) Authorize a unilateral material modification of the contract.

(6) Subject to ORS 72.2010, subsections (1) and (5) of this section also apply to a nonwritten agreement for the production of other seed.

(7) A term in a seed production contract that conflicts with subsection (1) or (5) of this section is void as a matter of public policy.

(8) ORS 576.705 does not apply to a processor as defined in ORS 576.700 that arranges for the production of other seed under a contract that is subject to this section or ORS 576.786.

576.786 Payment due date terms in contracts authenticated prior to planting.

(1) A seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the other seed may contain payment due date terms that differ from the payment due date terms described in ORS 576.783 (1)(b) if the contract states the date by which final payment for the other seed is due.

(2) If a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the other seed does not contain the information required under subsection (1) of this section, notwithstanding any contrary payment due date terms stated in the contract, the payment due date terms of the contract are subject to ORS 576.783 (1)(b).

(3) An extension or renewal of any seed production contract, regardless of when the contract was authenticated, may contain payment due date terms that differ from the payment due date terms described in ORS 576.783 (1)(b) if the extension or renewal contains the information required under subsection (1) of this section. If an extension or renewal of a seed production contract does not contain the information required under subsection (1) of this section, notwithstanding any contrary payment due date terms stated in the extension or renewal, the payment due date terms for the extension or renewal are subject to ORS 576.783 (1)(b).

(4) It is an implied condition of any payment requirement created as provided under this section that the producer is performing, or has completed performance, in accordance with the seed production contract and has not otherwise breached the contract.

576.789 Seed bailment contracts and seed purchase contracts; title; lien.

(1) A seed bailment contract or seed purchase contract does not create a possessory security interest in goods under ORS chapter 79. For a seed bailment contract, filing, recording or notice of the contract is not a requirement for establishing, during the term of the contract, the validity of the contract or for establishing and confirming in the seed dealer the title to all seed, seed stock and plant life grown or used by the producer under the terms of the contract.

(2) Payments due from a seed dealer to a producer under the terms of a seed bailment contract, or due to a seed grower under the terms of a seed purchase contract, are subject to lien under ORS 87.226 and to security interests perfected as provided under ORS chapter 79.

576.792 Terms of seed purchase contract.

(1) The terms of a seed purchase contract must include:

- (a) The estimated date for seed delivery;
- (b) The terms and estimated date for the seed dealer to pay the seed grower;
- (c) The amount of other seed to be purchased; and
- (d) The species, cultivars and quality standards of the other seed to be purchased.

(2) If the seed purchase contract does not settle the price of the other seed, the contract is enforceable and price shall be determined as described in ORS 72.3050 (1) to (3). A seed purchase contract must require the seed dealer to make payment to the seed grower within 30 days after seed delivery. However, upon written mutual agreement of the seed grower and the seed dealer, the grower may extend the period available for the dealer to make payment.

576.795 Modification of contract; damages for breach.

(1) A seed dealer that requests modification to the payment terms of a seed production contract for other seed shall pay an amount equal to at least 25 percent of the value of the contract prior to modification of the contract.

(2) A party to a seed production contract or seed purchase contract may not, as a condition of performance, require the other party to agree to a material modification of the contract. A contract modification obtained in violation of this subsection is unenforceable.

(3) In any action to recover damages for breach of a seed production contract or seed purchase contract, if the court finds that a party to the contract failed to act in good faith as defined in ORS 71.2010, the court may award the prevailing party court costs and reasonable attorney fees.

576.798 Seed not meeting contract quality standards.

(1) If testing as provided under a seed production contract establishes that other seed does not meet the quality standards set forth in the contract, the producer may at any time send the test results to the seed dealer and inquire whether the seed dealer intends to purchase the seed. If, within 30 days after the seed dealer receives the test results and inquiry from the producer, the seed dealer delivers a response informing the producer that the seed dealer intends to purchase the seed, the response is an accord that forms a seed purchase contract for the seed purchased under this subsection. Except as provided in this subsection regarding price, the

parties may establish the terms of the seed purchase contract as provided under ORS 576.792. The price of the seed that is subject to the seed purchase contract shall be:

- (a) Any price stated in the seed production contract for seed not meeting quality standards;
- (b) If not determined by the seed production contract, any price agreed to by the parties; or
- (c) If not determined by the seed production contract or by agreement, the market price for seed of the same kind and quality as the produced seed. However, a seed price established by the use of market price may not exceed any price established in the seed production contract for seed that meets quality standards.

(2) An accord that creates a seed purchase contract under subsection (1) of this section does not affect the terms of a seed production contract for any seed that was not described in the test results and inquiry sent by the producer.

(3) A producer may send test results and make an inquiry under subsection (1) of this section in any manner that documents seed dealer receipt of the test results and inquiry. A seed dealer may send a response under subsection (1) of this section to a producer in any manner that documents producer receipt of the response.

(4) If, within 30 days after the seed dealer receives the test results and inquiry from the producer, the seed dealer has not delivered a response informing the producer that the seed dealer intends to purchase the seed, the seed dealer is deemed to have refused purchase of the seed and to have authorized the producer to sell the seed in a commercially reasonable manner as "Variety Not Stated Seed." This subsection does not authorize the sale of any seed, seed stock or plant life of a protected variety grown or used by the producer other than a sale of seed as "Variety Not Stated Seed." The remedy provided under this subsection is in addition to any other remedy available to a producer by law. An authorization for sale arising under this subsection is in addition to any other conditional or unconditional authorization for sale that a seed dealer may grant to a producer.

576.800 [1997 c.9 §1; renumbered 571.350 in 2009]

576.802 Failure of seed dealer to make timely payment; fee.

(1) If a seed dealer fails to pay a producer for other seed when payment is due under a seed production contract or fails to pay a seed grower for other seed when payment is due under a seed purchase contract, the producer or seed grower may notify the State Department of Agriculture. Upon notification by a producer or seed grower, the department shall determine whether payment has been made when due. If the department determines that the seed dealer has not made a payment that is due under a seed production contract or seed purchase contract, the department shall notify the seed dealer in writing that the dealer has 30 days to pay the producer or seed grower all delinquent amounts plus interest on each delinquent amount at the rate of one percent per month simple interest from the final payment date for that delinquent amount.

(2) A seed production contract or seed purchase contract may not vary the terms of the remedy provided by this section. A seed dealer may appeal the notice given by the department under

this section as provided in ORS chapter 183. This section does not prevent a producer or seed grower from filing a notice of lien against a seed dealer.

(3) If a seed dealer fails to make payment as required by a notice given by the department under this section, the department shall suspend any seed dealer license issued to the dealer until the dealer demonstrates to the satisfaction of the department that the dealer is current on all payments due to all producers and seed growers. An order suspending a license under this subsection is subject to ORS chapter 183. However, the department may not suspend a seed dealer license under this section using the procedure described in ORS 183.430 (2).

(4) A seed dealer that fails to make payment on a seed production contract or seed purchase contract as required by a notice given by the department under this section is considered to have authorized the producer or seed grower to sell in a commercially reasonable manner any seed from the contract that is still in the possession of the producer or seed grower. This subsection does not prevent a seed dealer from giving consent to the producer or seed grower by other means and does not supersede the terms of a consent given by other means.

(5) The department may charge a producer or seed grower a fee, not to exceed \$200, for determining whether payment has been made in accordance with the terms of a seed production contract or seed purchase contract. The department may charge a producer or seed grower a fee, not to exceed \$50, for notifying a seed dealer in writing regarding the deadline for payment of delinquent amounts plus interest.

576.805 [1997 c.9 §2; renumbered 571.355 in 2009]

576.806 Financial assurance by seed dealer.

(1) As used in this section:

(a) "Officer" means any of the following individuals:

(A) A president, vice president, secretary, treasurer or director of a corporation.

(B) A general partner in a limited partnership.

(C) A manager in a manager-managed limited liability company.

(D) A member of a member-managed limited liability company.

(E) A trustee.

(F) An individual that is an officer as defined by the State Department of Agriculture by rule. A definition of "officer" adopted by department rule may include individuals not listed in this paragraph who may exercise substantial control over a business.

(b) "Owner" means:

(A) A sole proprietor of, partner in or holder of a controlling interest in an applicant; or

(B) Any person that is an owner as defined by the department by rule.

(2) The State Department of Agriculture may adopt rules to require, as a condition of issuing a seed dealer license under ORS 633.700, that each seed dealer provide the department financial assurance for the performance by the seed dealer under any seed production contract or seed purchase contract entered into by the seed dealer.

(3) The department may refuse to issue a seed dealer license to an applicant if the applicant, any owner or officer of the applicant or any individual exercising substantial control over the seed industry activities of the applicant:

(a) Is a seed dealer for which the license has been suspended under ORS 576.802;

(b) Is or was an owner or officer of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended under ORS 576.802; or

(c) Was an individual who exercised substantial control over the seed industry activities of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended under ORS 576.802.

(4) An agent that enters into a seed production contract on behalf of a seed dealer is conclusively presumed to have actual authority to establish the performance obligations of the seed dealer under the contract.

576.809 Rules; dispute resolution services.

(1) The Director of Agriculture may adopt rules for the administration and enforcement of ORS 576.780 to 576.809.

(2) The director may make mediation services available through the State Department of Agriculture for the resolution of seed production contract disputes and seed purchase contract disputes.

576.810 [1997 c.9 §3; 1999 c.105 §4; renumbered 571.360 in 2009]

576.814 Reporting adoption of rules regarding financial assurance by seed dealer.

If the State Department of Agriculture adopts a rule described in ORS 576.806 (2), the department shall report to the next regular session of the Legislative Assembly following the rule adoption regarding the contents of the rule and the matters considered by the department in developing the rule.

576.815 [1997 c.9 §6; renumbered 571.365 in 2009]

576.820 [1997 c.9 §4; repealed by 1999 c.105 §3]

576.821 [1999 c.105 §2; renumbered 571.370 in 2009]

576.850 Definitions for ORS 576.850 to 576.877. As used in ORS 576.850 to 576.877, unless the context requires otherwise:

(1) "Grape product" means any juice, must, concentrate or extract made from vinifera grapes, true or hybrid, whether or not partially fermented. It does not include alcoholic liquor as defined in ORS 471.001.

(2) "Wine" has the meaning given that term in ORS 471.001.

(3) "Wine grape growing" means the cultivation in commercial quantities of vinifera grapes in this state.

(4) "Wine making" means the ownership and control of or the management of a licensed winery in this state.

576.853 Legislative findings.

The Legislative Assembly finds and declares that:

(1) The development of world-class wine grape growing and wine making industries is important to Oregon as a whole. The health of the wine grape growing and wine making industries affects the well-being of Oregonians and Oregon rural economies and environments.

(2) It is in the public interest to encourage the orderly growth and development of sustainable, labor-intensive, value-added agricultural industries, such as the wine grape growing and wine making industries.

(3) State involvement in the wine grape growing and wine making industries must be coordinated to respond to state interests and to encourage appropriate partnership and cooperation between the public and private sectors in ensuring orderly growth and realizing statewide objectives for world-class wine grape growing and wine making industries.

576.856 Oregon Wine Board.

(1) The Oregon Wine Board is established as a semi-independent state agency subject to ORS 182.456 to 182.472.

(2) The board shall consist of nine members appointed by the Governor. In making appointments, the Governor shall consider nominations or recommendations made by organizations with nominating committees representative of all major wine industry regions of the state.

(3) The term of office for a member is three years, but a member serves at the pleasure of the Governor. Before the expiration of a term, the Governor shall appoint a successor whose term begins on January 1 next following. A member is eligible for reappointment.

(4) If a vacancy occurs on the board, the Governor shall appoint a qualified person to serve the unexpired term.

(5) A person appointed to the board must have:

(a) Expertise and experience in the Oregon wine grape growing or wine making industries; and

(b) A demonstrated ability and disposition to serve the state's interests regarding all aspects of the Oregon wine grape growing and wine making industries, including but not limited to the various types and sizes of wine grape growing and wine making operations, grape varieties and growing regions within the state.

(6) A member of the board must maintain the following qualifications during the term of office:

(a) Be a bona fide resident of the state or an officer or principal owner of an entity organized or registered to do business in this state.

(b) Have a demonstrated interest in the positive development of the Oregon wine industry.

(c) Be actively engaged in wine grape growing or wine making.

(7) The members of the board shall elect a chairperson and vice-chairperson with duties and powers as determined by the board.

576.859 Board purpose and duties.

The Oregon Wine Board shall operate for the purpose of supporting enological, viticultural and economic research to develop sustainable business practices for wine grape growing and wine making within Oregon and supporting the promotion of Oregon's wine grape growing and wine making industries. The board shall create and maintain a long term strategic plan and use that plan to guide the granting and funding decisions of the board. To the extent practicable, the board shall allocate funds and award grants in a manner that encourages coordinated, cost-effective projects that are integrated to implement the board's strategic statewide objectives for the development of world-class wine grape growing and wine making within Oregon.

576.862 Board powers.

To carry out the purposes specified in ORS 576.850 to 576.877, the Oregon Wine Board may:

- (1) Appoint officers and enter into agreements with consultants, agents and advisers, and prescribe their duties;
- (2) Appear on the board's own behalf before boards, commissions, departments or other agencies of municipal or county governments, the state government or the federal government;
- (3) Procure insurance against any losses in connection with properties of the board in such amounts and from such insurers as may be necessary or desirable;
- (4) Accept donations, grants, bequests and devises, conditional or otherwise, of money, property, services or other things of value, including the interest or earnings thereon but excluding corporate stock, that may be received from a government agency or a public or private institution or person, to be held, used or applied for any or all of the purposes specified in ORS 576.850 to 576.877 in accordance with the terms and conditions of the donation, grant, bequest or devise;
- (5) Organize, conduct, sponsor, cooperate with and assist the private sector and other state agencies in the conduct of conferences and tours relating to the wine grape growing and wine making industries;
- (6) Provide and pay for advisory services and technical assistance that the board finds necessary or desirable; and
- (7) Exercise any other powers necessary for the operation and functioning of the board under ORS 576.850 to 576.877.

576.865 State wine cellar; sources; uses.

The Oregon Wine Board shall establish a state wine cellar by purchasing or receiving donations of wines made in this state from fruit or grapes grown in this state. Wines collected in the state wine cellar may be:

- (1) Held as standards to compare against other wines to develop and improve Oregon viticultural and enological practices.
- (2) Sold to state governmental agencies for service at official governmental entertainment functions.
- (3) Sold to the Governor and to the administrative heads of state agencies on official government business to present as gifts when required by protocol or social custom.
- (4) Displayed and offered for tasting in connection with promotional campaigns to encourage the purchase of Oregon wines.

576.868 Rules; board employees.

- (1) In accordance with applicable provisions of ORS chapter 183, the Oregon Wine Board may adopt rules necessary for the administration of ORS 576.850 to 576.877.
- (2) Notwithstanding ORS 182.460 and 576.856 (1), employees of the Oregon Wine Board are not eligible for inclusion within the Public Employees Retirement System.

576.871 Strategic plan; budget; rules.

- (1) The report submitted by the Oregon Wine Board under ORS 182.472 must include a description of the long term strategic plan created by the board and a description of the progress made in implementing the statewide strategic objectives of the board during the most recent biennium.

- (2) Notwithstanding ORS 182.462:

- (a) The board shall prepare and submit annual plans and a budget recommended by the board for promotion and for research during the next fiscal year.

- (b) The board shall adopt rules specifying the procedures, criteria and timelines for the preparation and approval of the annual plans and budget for promotion and for research.

- (c) The Director of the Oregon Business Development Department shall review the budget and plans submitted under this section. In reviewing the annual plans and budget, the director shall consider whether the information supplied by the board is factual and consistent with ORS 576.850 to 576.877 and the positive development of the Oregon wine grape growing and wine making industries. The director shall either approve the budget and plans prior to the commencement of the next fiscal year or disapprove and return the budget and plans to the board with conditions necessary for approval prior to the commencement of the next fiscal year. In reviewing the budget and plans, the director may consult with and receive coordinated support from:

- (A) The State Department of Agriculture;

- (B) The Oregon Tourism Commission;

- (C) Oregon State University;

- (D) The Office of Community Colleges and Workforce Development; and

- (E) The Oregon Liquor Control Commission.

576.874 Payment of tax; delayed payment; records; inspections and audits.

(1) If a person selling or providing grape product to a winery performs part of the processing function of a winery, the person shall report the sale or provision of the grape product and pay the tax imposed under ORS 473.045 (5).

(2) A person or winery required to pay a tax under ORS 473.045 (5) shall keep accurate records sufficient to enable the Oregon Liquor Control Commission to determine by inspection and audit the accuracy of the taxes paid or due the Oregon Wine Board and of reports made or due to the commission.

(3) The commission or a designee of the commission may inspect and audit the records referred to in subsection (2) of this section for the purpose referred to in subsection (2) of this section.

(4) A person or winery may not refuse to permit an inspection and audit under subsection (3) of this section during business hours.

(5) In addition to the penalties prescribed in ORS 473.992, a person or winery that delays transmittal of tax payments under ORS 473.045 (5) beyond the due date specified in ORS 473.045 shall pay five percent of the overdue amount for the first full or partial month of delay and one percent of the overdue amount for each full or partial month of delay thereafter.

(6) If a winery willfully refuses to turn over tax moneys withheld under ORS 473.045 (5), the winery shall pay an additional amount equal to twice the amount of the tax moneys not turned over.

576.877 Disposition of moneys; research and promotion.

Moneys received on behalf of the Oregon Wine Board pursuant to ORS 473.030 (4) and 473.045 shall be deposited into the account created by the board under ORS 182.470 and are continuously appropriated to the board as provided in ORS 182.470, exclusively for use by the board in carrying out the provisions of ORS 576.850 to 576.877. The board shall allocate a portion of the moneys received from sources other than fees toward research in enology and viticulture and toward promotion of the Oregon wine grape growing and wine making industries, including administrative costs associated with either category.

576.990 [Repealed by 1953 c.119 §2]

576.991 Penalties.

(1) Violation of the provisions of ORS 576.024 is a Class B violation.

(2) Violation of any provision of ORS 576.051 to 576.455 is a Class C misdemeanor.

586.010 [Repealed by 1955 c.731 §34]

586.020 [Repealed by 1955 c.731 §34]

586.030 [Repealed by 1955 c.731 §34]

586.040 [Repealed by 1955 c.731 §34]

586.050 [Repealed by 1955 c.731 §34]

586.060 [Repealed by 1955 c.731 §34]

586.070 [Repealed by 1955 c.731 §34]

586.080 [Repealed by 1955 c.731 §34]

586.090 [Repealed by 1955 c.731 §34]

586.100 [Repealed by 1955 c.731 §34]

586.110 [Repealed by 1963 c.116 §1]

586.120 [Amended by 1961 c.726 §419; repealed by 1963 c.116 §1]

586.130 [Repealed by 1955 c.731 §34]

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

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

(2) "Grain" means wheat, corn, oats, barley, rye, flaxseed, soybeans, grain sorghum, dry beans and peas and any other grain for which standards are established by the state or the federal government.

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

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

(5) "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.

(6) "Warehouseman" includes any person, existing legal entity or municipality owning, operating or controlling any public warehouse.

586.220 [Repealed by 1955 c.731 §34]

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 State Department of Agriculture 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.

586.230 State Department of Agriculture to inspect warehouses and records and make rules to enforce ORS 586.210 to 586.730.

(1) The State Department of Agriculture 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) If sufficient funds are available, the department annually shall 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.

586.235 Cooperative agreements for inspections in other states.

The Director of Agriculture may enter into cooperative agreements with approved warehouse examination programs provided by state governments of contiguous states to perform warehouse examinations of merged code facilities domiciled in these contiguous states.

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 State Department of Agriculture 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 or such date as may be specified by rule of the State Department of Agriculture, 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) Documentation satisfactory to the department that the applicant has net assets of at least \$50,000.
- (f) 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) 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.

586.275 Revocation of or refusal to issue license.

Subject to the provisions of ORS chapter 183, 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 State Department of Agriculture 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.

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 State Department of Agriculture 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.

586.285 Operation without a license may be enjoined.

The State Department of Agriculture 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.

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 State Department of Agriculture 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."

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.

586.300 Warehouseman's bond; liability; automatic license suspension for failure to have or to maintain bond.

(1)

(a) 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.

(b) The bond for each warehouseman who elects to provide to the State Department of Agriculture a financial statement or audit satisfactory to the department shall be not less than \$20,000 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.

(c) For all warehousemen who fail to provide the financial statement or audit referred to in paragraph (b) of this subsection, the amount of the bond shall be determined by multiplying 20 cents times the number of bushels of rated grain storage capacity of the public warehouse furnishing the bond. The amount of the bond shall be not less than \$20,000 nor more than \$500,000. In lieu of a surety bond, the warehouseman may submit a letter of credit or securities satisfactory to the State Department of Agriculture.

(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 chapter 183, 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.

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 State Department of Agriculture 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 chapter 183.

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 State Department of Agriculture, 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.

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.

586.360 Warehouseman required to receive grain for storage; reservation of space for local customers; 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. However, a warehouseman may reserve adequate storage space for local producer customers.

(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 State Department of Agriculture, 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).

586.370 Obtaining blank forms of receipts from department.

(1) The State Department of Agriculture 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.

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 State Department of Agriculture 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.

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.

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 State Department of Agriculture, 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.

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 warehouse receiving grain for storage; damages for failure to deliver.

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

(2) A warehouse'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 warehouse 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 warehouse fails to deliver grain as provided in this section, the person entitled to delivery of the grain may maintain an action against the warehouse for any damages resulting from the warehouse'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.

586.410 Loading and shipping instructions; liability of warehouseman.

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.

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.

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; fee.

(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 State Department of Agriculture 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.

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 State Department of Agriculture 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.

586.527 Settlement of claims against defaulting warehouseman.

(1) If the State Department of Agriculture 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.

586.529 Receivership of warehouse business; claims against surety.

(1) An employee of the State Department of Agriculture 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 setoffs, 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.

586.530 Establishment of standard grades for commodities received.

(1) The State Department of Agriculture 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 forage products, including but not limited to straw and hay and for 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.

586.540 [Repealed by 1955 c.731 §34]

586.550 Warehouseman to keep copy of regulations available for inspection.

(1) It is the duty of the State Department of Agriculture, 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:

(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.

586.555 Warehouseman's reports to department.

Each warehouseman shall report information to the State Department of Agriculture 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.

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 warehouse 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 warehouse 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 warehouse under ORS chapter 77 or this chapter, then:

(a) The warehouse is required to apply for, obtain and maintain a bond as provided for in ORS 586.300 until such date that the State Department of Agriculture 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 warehouse is subject to the provisions of ORS 586.525 regardless of the fact that the license of the warehouse may have expired.

586.570 [Amended by 1955 c.731 §20; repealed by 2013 c.118 §1]

586.580 [Amended by 1955 c.731 §21; 1967 c.208 §7; repealed by 2013 c.118 §1]

586.590 [Amended by 1955 c.731 §22; repealed by 2013 c.118 §1]

586.600 [Amended by 1955 c.731 §23; 1967 c.208 §10; repealed by 2013 c.118 §1]

586.610 [Amended by 1955 c.731 §24; 1969 c.190 §6; repealed by 2013 c.118 §1]

586.620 [Repealed by 1955 c.731 §34]

586.630 [Amended by 1955 c.731 §25; repealed by 2013 c.118 §1]

586.640 [Amended by 1955 c.731 §26; repealed by 2013 c.118 §1]

586.650 [Amended by 1955 c.731 §27; repealed by 2013 c.118 §1]

586.660 [Amended by 1955 c.731 §28; repealed by 2013 c.118 §1]

586.670 [Amended by 1955 c.731 §29; repealed by 2013 c.118 §1]

586.680 [Amended by 1955 c.731 §30; repealed by 2013 c.118 §1]

586.690 [Repealed by 1955 c.731 §34]

586.700 [Repealed by 1955 c.731 §34]

586.710 Disposition of certain fees; continuing appropriation.

Except for fees paid under ORS 586.270, all fees collected by the State Department of Agriculture 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 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.

586.720 Application of Uniform Commercial Code—Documents of Title and other laws to public warehouses.

(1) Except as provided in subsection (2) of this section, every public warehouse 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.

(2) The provisions of ORS chapter 77 apply to public warehouses complying with the provisions of ORS 586.210 to 586.730 to the extent that the provisions of ORS chapter 77 are not inconsistent with the provisions of ORS 586.210 to 586.730.

586.730 Violation of provisions or noncompliance with order 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 or 586.710 to 586.730, or fail to comply with any order of the State Department of Agriculture, 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 or 586.710 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; 2013 c.118 §4]

586.990 Penalties.

(1) Violation of ORS 586.250 is a Class B misdemeanor.

(2) Violation of ORS 586.730 is a Class A misdemeanor.

(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, 586.710 or 586.720, or failure to comply with any order, rule, direction, demand or requirement of the State Department of Agriculture made pursuant to those sections, is a specific fine violation punishable by a fine not exceeding \$3,000 for each offense. Each violation is a separate and continuing offense. 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 Class A misdemeanor.