

House Bill 3201

Sponsored by Representative GILLIAM, Senator MONNES ANDERSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows State Department of Agriculture to adopt certification standards for persons dealing in nursery stock. Requires that department inspection of nursery include certain activities.

Allows expedited shipping permit process for licensees meeting certain certification standards. Allows department to cancel shipping permit of nursery violating certification standards.

Increases maximum license fee and millage rate for nursery stock licensees. Requires minimum annual three percent increase in license fees. Increases base charge, acreage assessment and maximum license fee for growers of Christmas trees.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to businesses dealing in plants; creating new provisions; amending ORS 571.015, 571.057,
3 571.135 and 571.530; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 and 3 of this 2015 Act are added to and made a part of ORS 571.005**
6 **to 571.230.**

7 **SECTION 2. The State Department of Agriculture may enter into agreements with in-**
8 **dustry, state, multistate or national public or private certification bodies for the department**
9 **to monitor growers of nursery stock, or facilities that participate in programs of the certi-**
10 **fication bodies. The monitoring may include, but need not be limited to, providing in-**
11 **spection, consultation, verifications and other services. This section does not allow the**
12 **department to enter into an agreement to provide monitoring for a certification program**
13 **having a standard that is lower than a corresponding certification standard adopted by the**
14 **department under ORS 571.015.**

15 **SECTION 3. An inspection by the State Department of Agriculture under ORS 571.145**
16 **must include, but need not be limited to:**

17 (1) Consultation with the grower regarding any state certification standards adopted by
18 the department under ORS 571.015 and the availability of, and qualifications for, participation
19 in any external certification programs for which the department provides monitoring as de-
20 scribed in section 2 of this 2015 Act;

21 (2) Consultation with the grower regarding critical control points for preventing plant
22 pests and best management practices for mitigating hazards that can encourage plant pests;

23 (3) A risk assessment of the facility to identify critical control points and to determine
24 best management practices for mitigating any hazards found at the facility;

25 (4) A review of facility records to verify that the facility has a written procedure manual
26 setting forth:

27 (a) The organization and management responsibilities for the facility;

28 (b) Staff training requirements;

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (c) A plan for the control of plant pests;
- 2 (d) A schedule for internal audits and system improvement review;
- 3 (e) Record keeping and document control procedures; and
- 4 (f) Methods for complying with any additional grower or facility requirements established
- 5 in department rules; and
- 6 (5) Consultation with the grower regarding:
 - 7 (a) The results of the inspection;
 - 8 (b) Actions necessary to correct problems or improve facility operations;
 - 9 (c) Deadlines for correcting problems;
 - 10 (d) Improvements or additions to elements and terms in the written procedure manual;
 - 11 and
 - 12 (e) Plans for additional consultation or inspections and for reporting compliance with:
 - 13 (A) Department requirements or recommendations;
 - 14 (B) Any state certification standards; and
 - 15 (C) Any external certification program monitored by the department under section 2 of
 - 16 this 2015 Act in which the grower elects to participate.

17 **SECTION 4.** ORS 571.015 is amended to read:

18 571.015. (1) The Legislative Assembly finds and declares that the propagation and raising of
19 nursery stock is an agricultural pursuit that should be regulated and assisted by the State Depart-
20 ment of Agriculture. A nursery service shall be maintained within the department for the purpose
21 of carrying out and enforcing the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

22 (2) The department *[is authorized to]* **may**:

23 (a) Inspect the nursery stock of growers, dealers and other persons and places of business pro-
24 vided for under ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

25 (b) **Establish state certification standards**, issue certificates and permits and check the li-
26 cense and licensing of persons affected by ORS 564.040, 564.991, 571.005 to 571.230 and 571.991. **In**
27 **establishing certification standards under this paragraph, the department shall give consid-**
28 **eration to any certification standards adopted by the federal government, another state or**
29 **a national association for nurseries.**

30 (c) Investigate violations of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

31 (d) Disseminate information among growers relative to treatment of nursery stock for both pre-
32 vention and elimination of attacks by plant pests and diseases.

33 (e) Carry out any other duties or responsibilities *[which]* **that** are of service to the nursery in-
34 dustry or *[which]* **that** may be necessary for the protection *[thereof]* **of the nursery industry.**

35 **SECTION 5.** ORS 571.057 is amended to read:

36 571.057. (1) Each person required to be licensed by ORS 571.055 shall *[make application for*
37 *such]* **apply for a** license, or for renewal *[thereof]* **of a license**, on a form furnished by the State
38 Department of Agriculture, *[which shall contain]* **that contains**:

39 (a) The name and address of the applicant, the number of locations to be operated by the ap-
40 plicant and the addresses *[thereof]* **of those locations**, and the assumed business name of the appli-
41 cant;

42 (b) If other than an individual, a statement whether *[such person]* **the applicant** is a partnership,
43 corporation or other organization;

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

1 the prior fiscal year; and

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

4 (2) Each application for a license *[shall]* **must** be accompanied by a license fee as provided for
5 by this section and any amounts required by ORS 571.075 (3). *[Such]* **An** application *[shall not be]*
6 **is not** a public record but *[shall be]* **is** subject to audit and review by the department. An applicant
7 for an original license or for a renewal license, without a full calendar year of prior nursery stock
8 sales or purchase experience upon which to base the fees, shall base *[such]* **the** fees on an estimated
9 annual gross dollar volume of sales or purchases of nursery stock by the applicant. Notwithstanding
10 the provisions of ORS 571.075, upon application by *[such]* **the** person for a renewal of license for a
11 subsequent year, the fees for the previous license year shall be adjusted to reflect the actual annual
12 gross dollar volume of sales or purchases of nursery stock by *[such]* **the** applicant. Any additional
13 fees found to be due *[shall]* **must** be paid to the department at the time of application for renewal
14 of license. *[, or]* The department shall refund any overpayment found to be due the applicant.

15 (3)(a) The **department shall establish the** license fees for growers and dealers *[shall be estab-*
16 *lished by the department]* after consulting with the State Nursery Research and Regulatory Com-
17 mittee and after public hearing in accordance with ORS chapter 183. *[Such fees shall be*
18 *established]* **The department shall establish the fees** on the basis of annual gross dollar volume
19 of sales or purchases of nursery stock within Oregon for the calendar year immediately preceding
20 the license period.

21 (b) The license fees *[shall]* **may** not be less than \$65 *[nor]* **or** more than *[\$20,000]* **\$25,000**. The
22 millage rate *[shall be not]* **may not be** less than one-tenth mill *[nor]* **or** more than *[5]* **10** mills. The
23 *[fees shall be established in such amount as shall be]* **department shall establish the fees in an**
24 **amount** sufficient to allow the department to administer and enforce the provisions of ORS 564.040,
25 564.991, 571.005 to 571.230 and 571.991.

26 (c) In addition to and at the time of payment of the annual license fee, growers and dealers shall
27 pay assessments for the expenses of carrying out the provisions of ORS 571.230 (2) and (3). Dealers
28 shall pay 0.0002 times the gross dollar purchases in the previous license year. Growers shall pay
29 0.0002 times the gross dollar sales in the previous license year. *[In no event shall]* The assessment
30 **may not** be less than \$10.

31 (4) For florists and landscape contracting businesses, dealer and agent fees *[will]* **must** be
32 computed on the basis of gross purchases of plants. For greenhouse operators and growers, including
33 persons collecting native plants, fees *[will]* **must** be computed on the basis of gross sales of plants
34 or sales value of plants produced in Oregon.

35 (5) Each grower or dealer *[shall be]* **is** entitled to one sales location under the license of the
36 grower or dealer. Each additional sales location, yard, branch store, stall or peddling vehicle main-
37 tained by *[such person shall require]* **the grower or dealer requires** the payment of the full license
38 fee for each of *[such]* **the** additional sales outlets. A grower who is also a dealer shall be licensed
39 only as a grower.

40 **SECTION 6.** ORS 571.057, as amended by section 5 of this 2015 Act, is amended to read:

41 571.057. (1) Each person required to be licensed by ORS 571.055 shall apply for a license, or for
42 renewal of a license, on a form furnished by the State Department of Agriculture, that contains:

43 (a) The name and address of the applicant, the number of locations to be operated by the ap-
44 plicant and the addresses of those locations, and the assumed business name of the applicant;

45 (b) If other than an individual, a statement whether the applicant is a partnership, corporation

1 or other organization;

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

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

7 (2) Each application for a license must be accompanied by a license fee as provided for by this
8 section and any amounts required by ORS 571.075 (3). An application is not a public record but is
9 subject to audit and review by the department. An applicant for an original license or for a renewal
10 license, without a full calendar year of prior nursery stock sales or purchase experience upon which
11 to base the fees, shall base the fees on an estimated annual gross dollar volume of sales or purchases
12 of nursery stock by the applicant. Notwithstanding the provisions of ORS 571.075, upon application
13 by the person for a renewal of license for a subsequent year, the fees for the previous license year
14 shall be adjusted to reflect the actual annual gross dollar volume of sales or purchases of nursery
15 stock by the applicant. Any additional fees found to be due must be paid to the department at the
16 time of application for renewal of license. The department shall refund any overpayment found to
17 be due the applicant.

18 (3)(a) The department shall establish the license fees for growers and dealers after consulting
19 with the State Nursery Research and Regulatory Committee and after public hearing in accordance
20 with ORS chapter 183. The department shall establish the fees on the basis of annual gross dollar
21 volume of sales or purchases of nursery stock within Oregon for the calendar year immediately
22 preceding the license period. **Subject to the fee and millage rate limits described in this sub-**
23 **section, the department shall increase license fees, not including any surcharge under ORS**
24 **571.075, by not less than three percent annually.**

25 (b) The license fees may not be less than \$65 or more than \$25,000. The millage rate may not
26 be less than one-tenth mill or more than 10 mills. The department shall establish the fees in an
27 amount sufficient to allow the department to administer and enforce the provisions of ORS 564.040,
28 564.991, 571.005 to 571.230 and 571.991.

29 (c) In addition to and at the time of payment of the annual license fee, growers and dealers shall
30 pay assessments for the expenses of carrying out the provisions of ORS 571.230 (2) and (3). Dealers
31 shall pay 0.0002 times the gross dollar purchases in the previous license year. Growers shall pay
32 0.0002 times the gross dollar sales in the previous license year. The assessment may not be less than
33 \$10.

34 (4) For florists and landscape contracting businesses, dealer and agent fees must be computed
35 on the basis of gross purchases of plants. For greenhouse operators and growers, including persons
36 collecting native plants, fees must be computed on the basis of gross sales of plants or sales value
37 of plants produced in Oregon.

38 (5) Each grower or dealer is entitled to one sales location under the license of the grower or
39 dealer. Each additional sales location, yard, branch store, stall or peddling vehicle maintained by
40 the grower or dealer requires the payment of the full license fee for each of the additional sales
41 outlets. A grower who is also a dealer shall be licensed only as a grower.

42 **SECTION 7.** ORS 571.057, as amended by sections 5 and 6 of this 2015 Act, is amended to read:

43 571.057. (1) Each person required to be licensed by ORS 571.055 shall apply for a license, or for
44 renewal of a license, on a form furnished by the State Department of Agriculture, that contains:

45 (a) The name and address of the applicant, the number of locations to be operated by the ap-

1 plicant and the addresses of those locations, and the assumed business name of the applicant;

2 (b) If other than an individual, a statement whether the applicant is a partnership, corporation
3 or other organization;

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

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

9 (2) Each application for a license must be accompanied by a license fee as provided for by this
10 section and any amounts required by ORS 571.075 (3). An application is not a public record but is
11 subject to audit and review by the department. An applicant for an original license or for a renewal
12 license, without a full calendar year of prior nursery stock sales or purchase experience upon which
13 to base the fees, shall base the fees on an estimated annual gross dollar volume of sales or purchases
14 of nursery stock by the applicant. Notwithstanding the provisions of ORS 571.075, upon application
15 by the person for a renewal of license for a subsequent year, the fees for the previous license year
16 shall be adjusted to reflect the actual annual gross dollar volume of sales or purchases of nursery
17 stock by the applicant. Any additional fees found to be due must be paid to the department at the
18 time of application for renewal of license. The department shall refund any overpayment found to
19 be due the applicant.

20 (3)(a) The department shall establish the license fees for growers and dealers after consulting
21 with the State Nursery Research and Regulatory Committee and after public hearing in accordance
22 with ORS chapter 183. The department shall establish the fees on the basis of annual gross dollar
23 volume of sales or purchases of nursery stock within Oregon for the calendar year immediately
24 preceding the license period. Subject to the fee and millage rate limits described in this subsection,
25 the department shall increase license fees, not including any surcharge under ORS 571.075, by not
26 less than three percent annually.

27 (b) The license fees may not be less than \$65 or more than [~~\$25,000~~] **\$40,000**. The millage rate
28 may not be less than one-tenth mill or more than 10 mills. The department shall establish the fees
29 in an amount sufficient to allow the department to administer and enforce the provisions of ORS
30 564.040, 564.991, 571.005 to 571.230 and 571.991.

31 (c) In addition to and at the time of payment of the annual license fee, growers and dealers shall
32 pay assessments for the expenses of carrying out the provisions of ORS 571.230 (2) and (3). Dealers
33 shall pay 0.0002 times the gross dollar purchases in the previous license year. Growers shall pay
34 0.0002 times the gross dollar sales in the previous license year. The assessment may not be less than
35 \$10.

36 (4) For florists and landscape contracting businesses, dealer and agent fees must be computed
37 on the basis of gross purchases of plants. For greenhouse operators and growers, including persons
38 collecting native plants, fees must be computed on the basis of gross sales of plants or sales value
39 of plants produced in Oregon.

40 (5) Each grower or dealer is entitled to one sales location under the license of the grower or
41 dealer. Each additional sales location, yard, branch store, stall or peddling vehicle maintained by
42 the grower or dealer requires the payment of the full license fee for each of the additional sales
43 outlets. A grower who is also a dealer shall be licensed only as a grower.

44 **SECTION 8.** ORS 571.135 is amended to read:

45 571.135. (1) The State Department of Agriculture may issue a shipping permit number to any

1 licensee who requests or requires one. The shipping permit number shall be the same as the license
 2 number and so designated on the license.

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

5 (3) **The department may establish an expedited permitting process for use by a nursery**
 6 **that meets any state certification standards adopted under ORS 571.015 and that participates,**
 7 **to the satisfaction of the department, in one or more external certification programs moni-**
 8 **tored by the department under section 2 of this 2015 Act.**

9 (4) **The Director of Agriculture may suspend or revoke a shipping permit issued to a**
 10 **nursery if the nursery has nursery stock that, in whole or in part, does not meet interstate**
 11 **shipment cleanliness standards adopted by the department by rule.**

12 [(3)] (5) A shipping invoice or bill of lading shall accompany a commercial shipment or delivery
 13 of nursery stock to be offered for sale. If a shipping invoice accompanies the shipment or delivery,
 14 the shipping invoice shall include the following:

- 15 (a) The name and address of the owner of the nursery stock.
- 16 (b) The nursery license number of the owner of the nursery stock.
- 17 (c) The point of origin of the nursery stock.
- 18 (d) The specific destination to which the nursery stock is being shipped or delivered.
- 19 (e) A description or inventory of the nursery stock in sufficient detail to allow identification of
 20 the nursery stock being shipped or delivered. The description or inventory shall include, at a mini-
 21 mum, the numbers, sizes and varieties of plants included in the shipment or delivery.
- 22 (f) The signature of the nursery stock carrier or the carrier's agent.

23 [(4)] (6) The department, by rule, may develop a standard form for shipping invoices described
 24 in subsection [(3)] (5) of this section and may make the form available at cost to licensees upon re-
 25 quest.

26 [(5)] (7) Each of the following persons shall retain a copy of the signed shipping invoice or the
 27 bill of lading for a commercial shipment or delivery of nursery stock to be offered for sale:

- 28 (a) The owner of the nursery stock.
- 29 (b) The carrier or carrier's agent transporting the nursery stock.
- 30 (c) The person taking delivery of the nursery stock at the shipment or delivery destination.

31 [(6)] (8) Subsections [(3) and (5)] (5) and (7) of this section do not apply to:

- 32 (a) A commercial shipment or delivery between two points owned, rented or leased by the owner
 33 of the nursery stock; or
- 34 (b) A commercial shipment or delivery of nursery stock in the possession of a business licensed
 35 by the State Landscape Contractors Board.

36 **SECTION 9.** ORS 571.530 is amended to read:

37 571.530. (1) Each person required to be licensed by ORS 571.525 shall *[make application for*
 38 *such]* **apply for a license** or for renewal *[thereof]* **of a license** on a form furnished by the State
 39 Department of Agriculture *[which shall contain]* **that contains:**

- 40 (a) The name and address of the applicant, the number of locations to be operated by the ap-
 41 plicant and the addresses *[thereof]* **of those locations**, and the assumed business name of the appli-
 42 cant;
- 43 (b) If other than an individual, a statement whether *[such person]* **the applicant** is a partnership,
 44 corporation or other organization;
- 45 (c) The total number of acres of Christmas trees grown by the applicant; and

1 (d) The type of business to be operated and, if the applicant is an agent, the principals the ap-
 2 plicant represents.

3 (2) Each application for a license *[shall]* **must** be accompanied by a license fee as provided for
 4 by this section. *[Such]* **An** application *[shall not be]* **is not** a public record but *[shall be]* **is** subject
 5 to audit and review by the department.

6 (3)(a) The **department shall establish** license fees for growers *[shall be established]* on the basis
 7 of the total number of acres of Christmas trees being grown in this state by the applicant. For the
 8 purpose of calculating the license fee, four acres of Christmas trees growing in a natural timber
 9 stand *[shall be]* **is** considered the equivalent of one acre of planted Christmas trees.

10 (b) The **department shall establish an** annual license fee schedule *[shall be established by the*
 11 *department]* after consultation with the State Christmas Tree Advisory Committee and after a public
 12 hearing in accordance with ORS chapter 183. **Subject to the fee limits described in this para-**
 13 **graph, the department shall increase license fees by not less than three percent annually.**
 14 The annual license fee *[shall]* **may** not exceed *[\$75]* **\$110** as a basic charge and *[\$3]* **\$4.50** per acre
 15 as an acreage assessment. The total license fee established pursuant to this paragraph *[shall not*
 16 *exceed \$5,000]* **may not exceed \$7,000.**

17 **SECTION 10. Section 3 of this 2015 Act applies to nursery inspections conducted on or**
 18 **after January 1, 2016.**

19 **SECTION 11. The amendments to ORS 571.057 and 571.530 by sections 5 and 9 of this 2015**
 20 **Act apply to licenses issued for licensing periods beginning on or after the effective date of**
 21 **this 2015 Act.**

22 **SECTION 12. The amendments to ORS 571.057 by section 6 of this 2015 Act apply to li-**
 23 **censes issued for licensing periods beginning on or after January 1, 2016.**

24 **SECTION 13. The amendments to ORS 571.057 by section 7 of this 2015 Act apply to li-**
 25 **censes issued for licensing periods beginning on or after January 1, 2017.**

26 **SECTION 14. This 2015 Act being necessary for the immediate preservation of the public**
 27 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 28 **on its passage.**

29 _____