

A-Engrossed
Senate Bill 338

Ordered by the Senate April 20
Including Senate Amendments dated April 20

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Natural Resources and Alternative Energy)

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.

Expands air quality provisions from woodstove emissions to solid fuel burning devices. Modifies provisions relating to sale of solid fuel burning device. [*Provides description of solid fuel burning device.*] **Defines "solid fuel burning device."** Prohibits burning of certain materials in solid fuel burning device, fireplace or trash burner. Renames Residential Wood Heating Air Quality Improvement Fund to Residential Solid Fuel Heating Air Quality Improvement Fund. Modifies certain aspects of fund. Modifies prohibition on installation of used solid fuel burning device. Modifies prohibition on sale of solid fuel burning device. Modifies prohibition on removal of solid fuel burning device. Modifies solid fuel heating curtailment program requirements. **Adds questions regarding woodstoves and fireplace inserts to seller's property disclosure statement.**

Provides that certain conditions become operative upon adoption of rules by Environmental Quality Commission.

A BILL FOR AN ACT

1
2 Relating to solid fuel burning devices; creating new provisions; amending ORS 105.464, 468.135,
3 468A.005, 468A.020, 468A.300, 468A.305, 468A.460, 468A.465, 468A.485, 468A.490, 468A.495,
4 468A.500, 468A.505 and 468A.515; and repealing ORS 468A.470, 468A.475, 468A.480, 468A.510 and
5 468A.520.

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

7 **SECTION 1.** ORS 468A.460 is amended to read:

8 468A.460. In the interest of the public health and welfare it is declared to be the public policy
9 of the state to control, reduce and prevent air pollution caused by [*woodstove emissions*] **solid fuel**
10 **burning devices.** The Legislative Assembly declares it to be the public policy of the state to reduce
11 [*woodstove*] **solid fuel burning device** emissions by encouraging the Department of Environmental
12 Quality to continue efforts to educate the public about the **air quality** effects of [*woodstove*] **those**
13 emissions and [*the desirability of achieving better woodstove*] **by ensuring that solid fuel burning**
14 **devices used in Oregon meet** emission performance [*and heating efficiency*] **standards established**
15 **in accordance with this section.**

16 **SECTION 2.** ORS 468A.465 is amended to read:

17 468A.465. (1) [*On and after July 1, 1986,*] A person may not advertise to sell, offer to sell or sell
18 a new [*woodstove*] **solid fuel burning device** in Oregon unless, **pursuant to rules adopted by the**
19 **Environmental Quality Commission, the Department of Environmental Quality certifies that**
20 **the device meets emission performance standards, certification labeling standards and all**
21 **other requirements set forth in rules adopted by the commission.**[.]

22 [*(1) The woodstove has been tested to determine its emission performance and heating efficiency;*]

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 [(2) *The woodstove is certified by the Department of Environmental Quality under the program*
2 *established under ORS 468A.480 (1); and]*

3 **(2) The department may certify a solid fuel burning device that has been certified by the**
4 **United States Environmental Protection Agency pursuant to 40 C.F.R. part 60, subpart AAA,**
5 **as in effect on the day the commission adopts rules under subsection (1) of this section.**

6 [(3) *An emission performance and heating efficiency label is attached to the woodstove.*]

7 **SECTION 3.** ORS 468A.485 is amended to read:

8 468A.485. [As used in ORS 468A.490:]

9 [(1) *“Area that exceeds the PM10 standard” means an area of the state that exceeds, on or after*
10 *January 1, 1990, the air quality standard for PM10 as established by the Environmental Quality*
11 *Commission under ORS 468A.025.*]

12 [(2) *“Western interior valleys” means the area of the state encompassed by the borders of the States*
13 *of Washington and California and the crests of the Cascade Mountain Range on the east and the Coast*
14 *Range on the west.*]

15 **(1) For the purposes of ORS 468A.020 and 468A.460 to 468A.515:**

16 **(a) “Pellet stove” means a solid fuel burning device that uses wood pellets, or other**
17 **biomass fuels designed for use in pellet stoves, as its primary source of fuel. The Environ-**
18 **mental Quality Commission may by rule further define what constitutes a pellet stove.**

19 **(b) “Residential structure” has the meaning given that term in ORS 701.005.**

20 **(c) “Solid fuel burning device” means any device that burns wood, coal or other**
21 **nongaseous or nonliquid fuels for aesthetic, space heating or water heating purposes in a**
22 **private or commercial establishment and that has a heat output of less than one million**
23 **British thermal units per hour.**

24 **(d) “Treated wood” means wood of any species that has been chemically impregnated,**
25 **painted or similarly modified to prevent weathering and deterioration.**

26 **(2) For the purposes of ORS 468A.465 to 468A.505 and section 17 of this 2007 Act, “solid**
27 **fuel burning device” does not include:**

28 **(a) Masonry fireplaces built on homesites, or factory-built fireplaces, that are designed**
29 **to be used with an open combustion chamber and without features to control air-to-fuel ra-**
30 **tios;**

31 **(b) Woodstoves built before 1940 that have an ornate construction and a current market**
32 **value substantially higher than a common woodstove manufactured during the same period;**

33 **(c) Pellet stoves; and**

34 **(d) Other solid fuel burning devices identified in rules adopted by the commission.**

35 **SECTION 4.** Section 5 of this 2007 Act is added to and made a part of ORS 468A.460 to
36 **468A.515.**

37 **SECTION 5.** A person may not cause or allow any of the following materials to be burned
38 **in a solid fuel burning device, fireplace or trash burner:**

39 **(1) Garbage;**

40 **(2) Treated wood;**

41 **(3) Plastic or plastic products;**

42 **(4) Rubber or rubber products;**

43 **(5) Animal carcasses;**

44 **(6) Products that contain asphalt;**

45 **(7) Waste petroleum products;**

1 **(8) Paint;**

2 **(9) Chemicals;**

3 **(10) Paper or paper products, except for paper used to kindle a fire; or**

4 **(11) Any other materials described in rules adopted by the Environmental Quality Com-**
5 **mission.**

6 **SECTION 6.** ORS 468A.490 is amended to read:

7 468A.490. (1) There is created within the State Treasury a fund known as the Residential
8 [Wood] **Solid Fuel** Heating Air Quality Improvement Fund, separate and distinct from the General
9 Fund.

10 (2) All moneys appropriated or received as gifts or grants for the purposes of this section **and**
11 **all moneys recovered by the Department of Environmental Quality under ORS 468.135 (3)**
12 shall be credited to the Residential [Wood] **Solid Fuel** Heating Air Quality Improvement Fund.

13 (3) The State Treasurer may invest and reinvest the moneys in the fund as provided in ORS
14 293.701 to 293.820. Interest from the moneys deposited in the fund and earnings from investment of
15 the moneys in the fund shall accrue to the fund.

16 (4) All moneys in the [Residential Wood Heating Air Quality Improvement] fund are continuously
17 appropriated to the Department of Environmental Quality to:

18 *[(a) Pay all costs incurred by the department in maintaining residential wood heating emissions*
19 *inventories, analyzing projects and programs proposed for funding in accordance with this section,*
20 *administering projects and programs selected for funding in accordance with this section and imple-*
21 *menting the requirements of ORS 468A.475 (2) and 468A.480 (1)(g).]*

22 **(a) Pay all costs incurred by the department for evaluating projects and programs, in-**
23 **cluding projects and programs proposed by local communities or qualifying organizations, for**
24 **project management and oversight of funds awarded for projects and programs selected in**
25 **accordance with this section and for documenting the benefit to air quality from such**
26 **projects.**

27 **(b) Fund programs established under subsection (5) of this section in a manner designed**
28 **to reduce the emission of air contaminants.**

29 *[(b) Pay all reasonable costs as determined by the Environmental Quality Commission for local*
30 *government and regional authority public education, emission inventory maintenance, curtailment and*
31 *opacity programs to reduce residential wood heating emission in an area that exceeds the PM10*
32 *standard or an area that is at risk of becoming an area that exceeds the PM10 standard.]*

33 *[(c) To the extent moneys remain in the fund after paying the costs under paragraphs (a) and (b)*
34 *of this subsection, to Fund programs established under subsections (5) and (6) of this section in a*
35 *manner designed to achieve cost-beneficial reductions in emission of air contaminants from woodstoves,*
36 *attain federal ambient air quality standards before deadlines specified in the Clean Air Act and*
37 *maintain compliance with such standards after the deadlines established in the Clean Air Act.]*

38 *[(d) Not more than 15 percent of the total amount of moneys received under this section shall be*
39 *expended for costs under paragraphs (a) and (b) of this subsection.]*

40 *[(5) A portion of the moneys available under subsection (4) of this section shall be used by the*
41 *Environmental Quality Commission to fund a low or no interest loan program for wood heated house-*
42 *holds located in the western interior valleys or in any other county containing an area that exceeds the*
43 *PM10 standard to replace woodstoves that were not certified under ORS 468A.480 for sale as new on*
44 *or after July 1, 1986. The program shall include the following elements:]*

45 **(5) The moneys available under subsection (4) of this section shall be used by the De-**

1 **partment of Environmental Quality to establish a program to provide grants, loans or other**
2 **subsidies for the replacement or removal of solid fuel burning devices that were not certified**
3 **to meet emission performance standards adopted by the Environmental Quality Commission**
4 **under ORS chapter 468A for sale as new on or after July 1, 1986, and before the effective date**
5 **of this 2007 Act, do not have a department certification label attached or were not certified**
6 **by the department pursuant to ORS 468A.465. In addition to any other requirements estab-**
7 **lished by rules adopted by the commission, the program shall provide that:**

8 (a) All forms of new high-efficiency, low air contaminant-emitting heating systems are allowed,
9 **except vent-free heating appliances;**

10 (b) Any [*removed woodstove*] **solid fuel burning device removed under the program** must be
11 destroyed;

12 (c) Any replacement [*woodstoves*] **device** selected under the program must be installed in con-
13 formance with building code requirements and the manufacturer's specifications including but not
14 limited to [*chimney*] **venting** specifications; and

15 (d) To be eligible, program participants shall participate in any home energy audit program
16 provided at no charge to the homeowner and shall obtain all information available regarding subsi-
17 dies for cost-effective weatherization. The department shall make the information required in this
18 subsection readily available to program participants.

19 *[(6) A portion of the moneys available under subsection (4) of this section shall be used by the*
20 *commission to fund local government or regional authority programs to provide subsidies for replace-*
21 *ment of woodstoves that were not certified under ORS 468A.480 for sale as new on or after July 1,*
22 *1986, to low income persons in wood heated households in an area that exceeds the PM10 standard.*
23 *The local government or regional authority programs must include the following elements to be eligible*
24 *for funding:]*

25 *[(a) All forms of new high-efficiency, low emitting heating systems are allowed.]*

26 *[(b) All woodstoves removed are destroyed.]*

27 *[(c) The local government or regional authority adopts and enforces an ordinance that limits*
28 *emissions from woodstoves to no visible smoke, except for steam and heat waves, during periods of air*
29 *stagnation and to an average of 20 percent opacity at all other times except during start up and refu-*
30 *eling as determined by the commission. This requirement shall not be in lieu of any final stage of*
31 *woodstove curtailment required during air stagnation if the final stage of curtailment is necessary to*
32 *prevent exceeding air quality standards established under ORS 468A.025 by the latest date allowed*
33 *under the Clean Air Act to reach attainment of such standards.]*

34 *[(d) In an airshed requiring more than a 50 percent reduction in woodheating emissions as speci-*
35 *fied in the State Implementation Plan control strategy for PM10 emissions, program participants shall*
36 *have a backup heat source if a certified woodstove is selected.]*

37 *[(e) Any replacement woodstove selected under the program must be installed in conformance with*
38 *building code requirements and the manufacturer's specifications including but not limited to chimney*
39 *specifications.]*

40 *[(f) To be eligible, program participants shall participate in any home energy audit program pro-*
41 *vided at no charge to the homeowner and shall obtain all information available regarding subsidies for*
42 *cost-effective weatherization. The local government or regional air quality authority shall make the in-*
43 *formation required in this subsection readily available to program participants.]*

44 **(6) The Department of Environmental Quality may enter into an agreement with a local**
45 **government or a regional authority in order to implement a program established under sub-**

1 **section (5) of this section.**

2 **SECTION 7.** ORS 468A.495 is amended to read:

3 468A.495. *[On and after September 29, 1991,]* The state building code under ORS 455.010 shall
4 prohibit installations of used *[woodstoves that were not certified for sale as new on or after July 1,*
5 *1986, under ORS 468A.480 (1).]* **solid fuel burning devices that:**

6 (1) **Were not certified to meet emission performance standards adopted by the Environ-**
7 **mental Quality Commission pursuant to ORS chapter 468A for sale as new on or after July**
8 **1, 1986, and before the effective date of this 2007 Act and do not have a Department of En-**
9 **vironmental Quality certification label attached; or**

10 (2) **Were not certified by the department pursuant to ORS 468A.465.**

11 **SECTION 8.** ORS 468A.500 is amended to read:

12 468A.500. *[On and after September 29, 1991, no]* A person *[shall]* **may not** advertise for sale, offer
13 to sell or sell, within this state, a used *[woodstove that was not certified under ORS 468A.480 (1) for*
14 *sale as new on or after July 1, 1986.]* **solid fuel burning device that:**

15 (1) **Was not certified to meet emission performance standards adopted by the Environ-**
16 **mental Quality Commission pursuant to ORS chapter 468A for sale as new on or after July**
17 **1, 1986, and before the effective date of this 2007 Act and does not have a Department of**
18 **Environmental Quality certification label attached; or**

19 (2) **Was not certified by the department pursuant to ORS 468A.465.**

20 **SECTION 9.** ORS 468A.505 is amended to read:

21 468A.505. *[After December 31, 1994, all woodstoves, other than cookstoves, not certified for sale*
22 *as new on or after July 1, 1986, under ORS 468A.480 (1) shall be removed and destroyed upon sale*
23 *of a home in any PM10 nonattainment area in the state that does not attain compliance with the PM10*
24 *standard established by the Environmental Quality Commission under ORS 468A.025 by December 31,*
25 *1994.]*

26 (1) **In connection with the sale of a residential structure, all solid fuel burning devices,**
27 **other than cookstoves, in the residential structure or on the real property sold with the**
28 **residential structure, must be removed and destroyed if the solid fuel burning devices:**

29 (a) **Were not certified to meet emission performance standards adopted by the Environ-**
30 **mental Quality Commission pursuant to ORS chapter 468A for sale as new on or after July**
31 **1, 1986, and before the effective date of this 2007 Act and do not have a Department of En-**
32 **vironmental Quality certification label attached; or**

33 (b) **Were not certified by the department pursuant to ORS 468A.465.**

34 (2) **This section does not apply to central, wood-fired furnaces that are indoors, ducted**
35 **and thermostatically controlled and that have a dedicated cold air inlet and a dedicated hot**
36 **air outlet that connect to the heating ductwork for the entire residential structure. To claim**
37 **this exemption, the person responsible for removal and destruction of a solid fuel burning**
38 **device under this section shall provide to the department written verification that the ex-**
39 **emption applies, pursuant to rules adopted by the commission.**

40 (3) **The removal and destruction of solid fuel burning devices under this section is the**
41 **responsibility of the seller of the residential structure, unless the seller and buyer agree in**
42 **writing that it is the buyer's responsibility. If the seller retains responsibility, the seller shall**
43 **remove and destroy the devices prior to the closing date of the sale of the residential**
44 **structure. If the buyer accepts responsibility, the buyer shall remove and destroy the devices**
45 **within 30 days of the closing date of the sale of the residential structure.**

1 **(4) The person responsible for removal and destruction of solid fuel burning devices under**
 2 **this section shall provide to the department written confirmation of the removal and de-**
 3 **struction, pursuant to rules adopted by the commission.**

4 **(5) The failure of a seller or buyer of a residential structure to comply with this section**
 5 **does not invalidate an instrument of conveyance executed in the sale.**

6 **SECTION 10.** ORS 468A.515 is amended to read:

7 468A.515. **(1) If a local government or regional authority has not adopted or is not ade-**
 8 **quately implementing a curtailment program in any area of the state where such a program**
 9 **is required under the Clean Air Act, the Environmental Quality Commission may adopt by**
 10 **rule and the Department of Environmental Quality may operate and enforce a program to**
 11 **curtail residential solid fuel heating during periods of air stagnation as described in sub-**
 12 **section (2) of this section. The department shall suspend operation and enforcement of a**
 13 **program adopted under this subsection upon a determination by the department that the**
 14 **local government or regional authority has adopted and is adequately implementing the re-**
 15 **quired curtailment program.**

16 [(1)] **(2) Any programs adopted by the Environmental Quality Commission pursuant to sub-**
 17 **section (1) of this section to curtail residential [wood] solid fuel heating during periods of air**
 18 **stagnation shall provide for two stages of curtailment based on the severity of projected air quality**
 19 **conditions. Except as provided in subsection [(2)] (3) of this section, the programs shall apply to all**
 20 **[woodburning fireplaces, woodstoves and appliances] heating by means of solid fuel, including but**
 21 **not limited to solid fuel burning devices, fireplaces and appliances. The programs shall provide**
 22 **that [woodstoves that were certified for sale as new on or after July 1, 1986, under ORS 468A.480 (1)**
 23 **shall be curtailed only at the second stage to insure attainment of air quality standards.] use of a solid**
 24 **fuel burning device, fireplace or appliance be curtailed only at the stage established for more**
 25 **severe air quality conditions if the solid fuel burning device, fireplace or appliance:**

26 **(a) Was certified to meet emission performance standards adopted by the commission**
 27 **pursuant to ORS chapter 468A for sale as new on or after July 1, 1986, and before the effec-**
 28 **tive date of this 2007 Act and has a Department of Environmental Quality certification label**
 29 **attached; or**

30 **(b) Was certified by the department pursuant to ORS 468A.465.**

31 [(2)] **(3) Programs adopted by the Environmental Quality Commission to curtail residential**
 32 **[wood] solid fuel heating during periods of air stagnation [shall] do not apply to:**

33 **(a) A person who is classified at less than or equal to 125 percent of poverty level pursuant to**
 34 **guidelines established by the commission taking into account federal poverty [income] guide-**
 35 **lines [adopted under the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35)];**

36 **(b) A person whose residence is equipped [only with wood heating until such time as funding**
 37 **becomes available for replacement or woodstoves that were not certified under ORS 468A.480 for sale**
 38 **as new on or after July 1, 1986, and for the period of time between application for such funds and**
 39 **completion of the replacement] solely with a solid fuel burning device that meets any additional**
 40 **requirements as described in rules adopted by the commission; and**

41 **(c) [Wood burning] Pellet stoves, unless the stove is located in an area designated as a**
 42 **nonattainment area for particulates by rule of the commission adopted under ORS 468A.025.**

43 [(3)] *If a local government or regional authority has not adopted or is not adequately implementing*
 44 *the required curtailment program, the Environmental Quality Commission may adopt by rule and the*
 45 *Department of Environmental Quality may operate and enforce a program to curtail residential wood*

1 heating during periods of air stagnation as specified in subsection (1) of this section in any area of the
2 state where such a program is required under the Clean Air Act. The department shall suspend oper-
3 ation and enforcement of a program adopted under this subsection upon a determination by the de-
4 partment that the local government or regional air quality authority has adopted and is adequately
5 implementing the required curtailment program.]

6 [(4) Except as provided in this section, after September 29, 1991, the commission shall not adopt
7 or make more stringent any additional regulatory programs affecting residential wood heating unless
8 the air quality standard for PM10 established by the commission under ORS 468A.025 has not been
9 attained in the state by the latest date, considering extensions, allowed under the Clean Air Act.
10 Nothing in this section shall be construed to affect regulatory programs in effect on September 29,
11 1991.]

12 **SECTION 11.** ORS 468A.005 is amended to read:

13 468A.005. As used in ORS chapters 468, 468A and 468B, unless the context requires otherwise:

14 (1) "Air-cleaning device" means any method, process or equipment which removes, reduces or
15 renders less noxious air contaminants prior to their discharge in the atmosphere.

16 (2) "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon,
17 acid or particulate matter or any combination thereof.

18 (3) "Air contamination" means the presence in the outdoor atmosphere of one or more air con-
19 taminants which contribute to a condition of air pollution.

20 (4) "Air contamination source" means any source at, from, or by reason of which there is emit-
21 ted into the atmosphere any air contaminant, regardless of who the person may be who owns or
22 operates the building, premises or other property in, at or on which such source is located, or the
23 facility, equipment or other property by which the emission is caused or from which the emission
24 comes.

25 (5) "Air pollution" means the presence in the outdoor atmosphere of one or more air contam-
26 inants, or any combination thereof, in sufficient quantities and of such characteristics and of a du-
27 ration as are or are likely to be injurious to public welfare, to the health of human, plant or animal
28 life or to property or to interfere unreasonably with enjoyment of life and property throughout such
29 area of the state as shall be affected thereby.

30 (6) "Area of the state" means any city or county or portion thereof or other geographical area
31 of the state as may be designated by the Environmental Quality Commission.

32 [(7) "Woodstove" means a wood fired appliance with a closed fire chamber which maintains an
33 air-to-fuel ratio of less than 30 during the burning of 90 percent or more of the fuel mass consumed in
34 the low firing cycle. The low firing cycle means less than or equal to 25 percent of the maximum burn
35 rate achieved with doors closed or the minimum burn achievable.]

36 **SECTION 12.** ORS 468A.020 is amended to read:

37 468A.020. (1) Except as provided in this section and in ORS 476.380 and 478.960, the air pollution
38 laws contained in ORS chapters 468, 468A and 468B do not apply to:

39 (a) Agricultural operations and the growing or harvesting of crops and the raising of fowls or
40 animals, except field burning which shall be subject to regulation pursuant to ORS 468.140, 468.150,
41 468A.555 to 468A.620 and 468A.992 and this section;

42 (b) Use of equipment in agricultural operations in the growth of crops or the raising of fowls
43 or animals, except field burning which shall be subject to regulation pursuant to ORS 468.140,
44 468.150, 468A.555 to 468A.620 and 468A.992 and this section;

45 (c) Barbecue equipment used in connection with any residence;

1 (d) Agricultural land clearing operations or land grading;

2 (e) Heating equipment in or used in connection with residences used exclusively as dwellings for
3 not more than four families, except [*woodstoves*] **solid fuel burning devices**, which shall be subject
4 to regulation under this section[,] **and ORS 468.140 and 468A.460 to [468A.480, 468A.490 and]**
5 **468A.515;**

6 (f) Fires set or permitted by any public agency when such fire is set or permitted in the per-
7 formance of [*its*] official duty for the purpose of weed abatement, prevention or elimination of a fire
8 hazard, or instruction of employees in the methods of fire fighting, which in the opinion of the
9 agency is necessary;

10 (g) Fires set pursuant to permit for the purpose of instruction of employees of private industrial
11 concerns in methods of fire fighting, or for civil defense instruction;

12 (h) The propagation and raising of nursery stock, except boilers used in connection with the
13 propagation and raising of nursery stock;

14 (i) The propane flaming of mint stubble; or

15 (j) Stack or pile burning of residue from Christmas trees, as defined in ORS 571.505, during the
16 period beginning October 1 and ending May 31 of the following year.

17 (2) As used in subsection (1) of this section, “field burning” does not include propane flaming
18 of mint stubble.

19 **SECTION 13.** ORS 468.135 is amended to read:

20 468.135. (1) Any civil penalty under ORS 468.140 shall be imposed in the manner provided in
21 ORS 183.745.

22 (2) **Except as provided in subsection (3) of this section**, all penalties recovered under ORS
23 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the
24 penalty is recovered by a regional air quality control authority, it shall be paid into the county
25 treasury of the county in which the violation occurred.

26 (3)(a) **Except as provided in paragraph (b) of this subsection, all penalties recovered by**
27 **the Department of Environmental Quality for violations of ORS 468A.085 or 468A.700 to**
28 **468A.760 or any rule or standard adopted by the Environmental Quality Commission pursuant**
29 **to those statutes shall be paid into the Residential Solid Fuel Heating Air Quality Improve-**
30 **ment Fund established under ORS 468A.490.**

31 (b) **The maximum amount of penalties that may be paid into the Residential Solid Fuel**
32 **Heating Air Quality Improvement Fund in a biennium is \$400,000. When the amount of pen-**
33 **alties paid into the fund for a biennium reaches \$400,000, any additional penalties recovered**
34 **by the department in that biennium shall be paid into the State Treasury and credited to the**
35 **General Fund.**

36 **SECTION 14.** ORS 468A.300 is amended to read:

37 468A.300. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330, 468A.415, 468A.420 and
38 [*468A.485*] **468A.460** to 468A.515:

39 (1) “Administrator” means the administrator of the United States Environmental Protection
40 Agency.

41 (2) “Clean Air Act” means P.L. 88-206 as amended.

42 (3) “Federal operating permit program” means the program established by the Environmental
43 Quality Commission and the Department of Environmental Quality pursuant to ORS 468A.310.

44 (4) “Major source” has the meaning given in section 501(2) of the Clean Air Act.

45 (5) “Title V” means Title V of the Clean Air Act.

SECTION 15. ORS 468A.305 is amended to read:

468A.305. The Legislative Assembly declares the purpose of ORS 184.730, 184.733, 468.065, 468A.020, 468A.040, 468A.045, 468A.155, 468A.300 to 468A.330, 468A.415[,] **and** 468A.420 [*and* 468A.475 to 468A.520] is to:

(1) [*Insure*] **Ensure** that the state meets its minimum obligations under the Clean Air Act Amendments of 1990.

(2) Avoid direct regulation of industrial sources of air pollution through a federal government administered permit program.

(3) Prevent imposition of Clean Air Act sanctions [*which*] **that** would impound federal highway funds appropriated for the state and increase emission offset requirements for new and expanding major industrial sources of air pollution.

(4) Provide adequate resources to fully cover the costs of the Department of Environmental Quality to develop and administer an approvable federal operating permit program in accordance with the Clean Air Act, including costs of permitting, compliance, rule development, emission inventorying, monitoring and modeling and related activities.

SECTION 16. Section 17 of this 2007 Act is added to and made a part of ORS 105.462 to 105.492.

SECTION 17. ORS 105.464 preempts any law, rule, regulation, code or ordinance of the political subdivisions of this state including, but not limited to, the Lane Regional Air Protection Agency regarding the disclosure of solid fuel burning devices, as defined in ORS 468A.485, in connection with a written offer to purchase real property in this state for which a seller's property disclosure statement is required under ORS 105.465 and 105.470.

SECTION 18. ORS 105.464 is amended to read:

105.464. A seller's property disclosure statement must be in substantially the following form:

If required under ORS 105.465, a seller shall deliver in substantially the following form the seller's property disclosure statement to each buyer who makes a written offer to purchase real property in this state:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. Please refer to the line number(s) of the question(s) when you provide your explanation(s). If you are not claiming an exclusion or refusing to provide the form under ORS 105.475 (4), you should date and sign each page of this disclosure statement and each attachment.

Each seller of residential property described in ORS 105.465 must deliver this form to each buyer who makes a written offer to purchase. Under ORS 105.475 (4), refusal to provide this form gives the buyer the right to revoke their offer at any time prior to closing the transaction. Use only the section(s) of the form that apply to the transaction for which the form is used. If you are claiming an exclusion under ORS 105.470, fill out only Section 1.

An exclusion may be claimed only if the seller qualifies for the exclusion under the law. If not ex-

cluded, the seller must disclose the condition of the property or the buyer may revoke their offer to purchase anytime prior to closing the transaction. Questions regarding the legal consequences of the seller's choice should be directed to a qualified attorney.

(DO NOT FILL OUT THIS SECTION UNLESS YOU ARE CLAIMING AN EXCLUSION UNDER ORS 105.470)

Section 1. EXCLUSION FROM ORS 105.462 TO 105.490:

You may claim an exclusion under ORS 105.470 only if you qualify under the statute. If you are not claiming an exclusion, you must fill out Section 2 of this form completely.

Initial only the exclusion you wish to claim.

_____ This is the first sale of a dwelling never occupied. The dwelling is constructed or installed under building or installation permit(s) #_____, issued by _____.

_____ This sale is by a financial institution that acquired the property as custodian, agent or trustee, or by foreclosure or deed in lieu of foreclosure.

_____ The seller is a court appointed receiver, personal representative, trustee, conservator or guardian.

_____ This sale or transfer is by a governmental agency.

Signature(s) of Seller claiming exclusion
Date _____

Buyer(s) to acknowledge Seller's claim
Date _____

(IF YOU DID NOT CLAIM AN EXCLUSION IN SECTION 1, YOU MUST FILL OUT THIS SECTION.)

Section 2. SELLER'S PROPERTY DISCLOSURE STATEMENT

(NOT A WARRANTY)
(ORS 105.464)

NOTICE TO THE BUYER: THE FOLLOWING REPRESENTATIONS ARE MADE BY THE

1 SELLER(S) CONCERNING THE CONDITION OF THE PROPERTY LOCATED
2 AT _____ (“THE PROPERTY”).
3

4 DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS
5 OF SELLER’S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE.
6 BUYER HAS FIVE DAYS FROM THE SELLER’S DELIVERY OF THIS SELLER’S DISCLOSURE
7 STATEMENT TO REVOKE BUYER’S OFFER BY DELIVERING BUYER’S SEPARATE SIGNED
8 WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER’S
9 DISCLOSURE STATEMENT, UNLESS BUYER WAIVES THIS RIGHT AT OR PRIOR TO ENTER-
10 ING INTO A SALE AGREEMENT.
11

12 FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS
13 PROPERTY, BUYER IS ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED
14 SPECIALIST TO INSPECT THE PROPERTY ON BUYER’S BEHALF INCLUDING, FOR EXAM-
15 PLE, ONE OR MORE OF THE FOLLOWING: ARCHITECTS, ENGINEERS, PLUMBERS,
16 ELECTRICIANS, ROOFERS, ENVIRONMENTAL INSPECTORS, BUILDING INSPECTORS, CER-
17 TIFIED HOME INSPECTORS, OR PEST AND DRY ROT INSPECTORS.
18

19 Seller _____ is/ _____ is not occupying the property.
20

21 I. SELLER’S REPRESENTATIONS:
22

23 The following are representations made by the seller and are not the representations of any finan-
24 cial institution that may have made or may make a loan pertaining to the property, or that may
25 have or take a security interest in the property, or any real estate licensee engaged by the seller
26 or the buyer.
27

28 *If you mark yes on items with *, attach a copy or explain on an attached sheet.
29

30 1. TITLE

31 A. Do you have legal authority to sell the property? []Yes []No []Unknown

32 *B. Is title to the property subject to any of the
33 following: []Yes []No []Unknown

34 (1) First right of refusal

35 (2) Option

36 (3) Lease or rental agreement

37 (4) Other listing

38 (5) Life estate?

39 *C. Are there any encroachments, boundary
40 agreements, boundary disputes or recent
41 boundary changes? []Yes []No []Unknown

42 *D. Are there any rights of way, easements,
43 licenses, access limitations or claims that
44 may affect your interest in the property? []Yes []No []Unknown

45 *E. Are there any agreements for joint

- 1 maintenance of an easement or right of way? []Yes []No []Unknown
 2 *F. Are there any governmental studies, designations,
 3 zoning overlays, surveys or notices that would
 4 affect the property? []Yes []No []Unknown
 5 *G. Are there any pending or existing governmental
 6 assessments against the property? []Yes []No []Unknown
 7 *H. Are there any zoning violations or
 8 nonconforming uses? []Yes []No []Unknown
 9 *I. Is there a boundary survey for the property? []Yes []No []Unknown
 10 *J. Are there any covenants, conditions,
 11 restrictions or private assessments that
 12 affect the property? []Yes []No []Unknown
 13 *K. Is the property subject to any special tax
 14 assessment or tax treatment that may result
 15 in levy of additional taxes if the property
 16 is sold? []Yes []No []Unknown
 17
 18 2. WATER
 19 A. Household water
 20 (1) The source of the water is (check ALL that apply):
 21 []Public []Community []Private
 22 []Other _____
 23 (2) Water source information:
 24 *a. Does the water source require a water permit? []Yes []No []Unknown
 25 If yes, do you have a permit? []Yes []No
 26 b. Is the water source located on the property? []Yes []No []Unknown
 27 *If not, are there any written agreements for
 28 a shared water source? []Yes []No []Unknown []NA
 29 *c. Is there an easement (recorded or unrecorded)
 30 for your access to or maintenance of the water
 31 source? []Yes []No []Unknown
 32 d. If the source of water is from a well or spring,
 33 have you had any of the following in the past
 34 12 months? []Flow test []Bacteria test
 35 []Chemical contents test []Yes []No []Unknown []NA
 36 *e. Are there any water source plumbing problems
 37 or needed repairs? []Yes []No []Unknown
 38 (3) Are there any water treatment systems for
 39 the property? []Yes []No []Unknown
 40 []Leased []Owned
 41 B. Irrigation
 42 (1) Are there any [] water rights or [] other
 43 irrigation rights for the property? []Yes []No []Unknown
 44 *(2) If any exist, has the irrigation water been
 45 used during the last five-year period? []Yes []No []Unknown []NA

- 1 *(3) Is there a water rights certificate or other
2 written evidence available? []Yes []No []Unknown []NA
3 C. Outdoor sprinkler system
4 (1) Is there an outdoor sprinkler system for the
5 property? []Yes []No []Unknown
6 (2) Has a back flow valve been installed? []Yes []No []Unknown []NA
7 (3) Is the outdoor sprinkler system operable? []Yes []No []Unknown []NA
8
9 3. SEWAGE SYSTEM
10 A. Is the property connected to a public or
11 community sewage system? []Yes []No []Unknown
12 B. Are there any new public or community sewage
13 systems proposed for the property? []Yes []No []Unknown
14 C. Is the property connected to an on-site septic
15 system? []Yes []No []Unknown
16 If yes, was it installed by permit? []Yes []No []Unknown []NA
17 *Has the system been repaired or altered? []Yes []No []Unknown
18 Has the condition of the system been
19 evaluated and a report issued? []Yes []No []Unknown
20 Has it ever been pumped? []Yes []No []Unknown []NA
21 If yes, when? _____
22 *D. Are there any sewage system problems or
23 needed repairs? []Yes []No []Unknown
24 E. Does your sewage system require on-site
25 pumping to another level? []Yes []No []Unknown
26
27 4. DWELLING INSULATION
28 A. Is there insulation in the:
29 (1) Ceiling? []Yes []No []Unknown
30 (2) Exterior walls? []Yes []No []Unknown
31 (3) Floors? []Yes []No []Unknown
32 B. Are there any defective insulated doors or
33 windows? []Yes []No []Unknown
34
35 5. DWELLING STRUCTURE
36 *A. Has the roof leaked? []Yes []No []Unknown
37 If yes, has it been repaired? []Yes []No []Unknown []NA
38 B. Are there any additions, conversions or
39 remodeling? []Yes []No []Unknown
40 If yes, was a building permit required? []Yes []No []Unknown []NA
41 If yes, was a building permit obtained? []Yes []No []Unknown []NA
42 If yes, was final inspection obtained? []Yes []No []Unknown []NA
43 C. Are there smoke alarms or detectors? []Yes []No []Unknown
44 D. Is there a woodstove **or fireplace**
45 **insert** included in the sale? []Yes []No []Unknown

- 1 **If yes, what is the make?**
 2 _____
- 3 ***If yes, was it installed with a permit?** **]Yes** **]No** **]Unknown**
- 4 ***If yes, is a certification label issued**
 5 **by the United States Environmental**
 6 **Protection Agency (EPA) or the**
 7 **Department of Environmental Quality**
 8 **(DEQ) affixed to it?** **]Yes** **]No** **]Unknown**
- 9 *E. Has pest and dry rot, structural or
 10 “whole house” inspection been done
 11 within the last three years? **]Yes** **]No** **]Unknown**
- 12 *F. Are there any moisture problems, areas of
 13 water penetration, mildew odors or other
 14 moisture conditions (especially in the
 15 basement)? **]Yes** **]No** **]Unknown**
- 16 *If yes, explain on attached sheet the frequency and
 17 extent of problem and any insurance claims,
 18 repairs or remediation done.
- 19 G. Is there a sump pump on the property? **]Yes** **]No** **]Unknown**
- 20 H. Are there any materials used in the
 21 construction of the structure that are or
 22 have been the subject of a recall, class
 23 action suit, settlement or litigation? **]Yes** **]No** **]Unknown**
- 24 If yes, what are the materials? _____
- 25 (1) Are there problems with the materials? **]Yes** **]No** **]Unknown** **]NA**
- 26 (2) Are the materials covered by a warranty? **]Yes** **]No** **]Unknown** **]NA**
- 27 (3) Have the materials been inspected? **]Yes** **]No** **]Unknown** **]NA**
- 28 (4) Have there ever been claims filed for these
 29 materials by you or by previous owners? **]Yes** **]No** **]Unknown** **]NA**
- 30 If yes, when? _____
- 31 (5) Was money received? **]Yes** **]No** **]Unknown** **]NA**
- 32 (6) Were any of the materials repaired or
 33 replaced? **]Yes** **]No** **]Unknown** **]NA**
- 34
- 35 **6. DWELLING SYSTEMS AND FIXTURES**
- 36 If the following systems or fixtures are included
 37 in the purchase price, are they in good working
 38 order on the date this form is signed?
- 39 A. Electrical system, including wiring, switches,
 40 outlets and service **]Yes** **]No** **]Unknown**
- 41 B. Plumbing system, including pipes, faucets,
 42 fixtures and toilets **]Yes** **]No** **]Unknown**
- 43 C. Water heater tank **]Yes** **]No** **]Unknown**
- 44 D. Garbage disposal **]Yes** **]No** **]Unknown** **]NA**
- 45 E. Built-in range and oven **]Yes** **]No** **]Unknown** **]NA**

- 1 F. Built-in dishwasher []Yes []No []Unknown []NA
 2 G. Sump pump []Yes []No []Unknown []NA
 3 H. Heating and cooling systems []Yes []No []Unknown []NA
 4 I. Security system []Owned []Leased []Yes []No []Unknown []NA
 5 J. Are there any materials or products used in
 6 the systems and fixtures that are or have
 7 been the subject of a recall, class action
 8 settlement or other litigations? []Yes []No []Unknown
 9 If yes, what product? _____
 10 (1) Are there problems with the product? []Yes []No []Unknown
 11 (2) Is the product covered by a warranty? []Yes []No []Unknown
 12 (3) Has the product been inspected? []Yes []No []Unknown
 13 (4) Have claims been filed for this product
 14 by you or by previous owners? []Yes []No []Unknown
 15 If yes, when? _____
 16 (5) Was money received? []Yes []No []Unknown
 17 (6) Were any of the materials or products repaired
 18 or replaced? []Yes []No []Unknown
 19
 20 7. COMMON INTEREST
 21 A. Is there a Home Owners' Association
 22 or other governing entity? []Yes []No []Unknown
 23 Name of Association or Other Governing
 24 Entity _____
 25 Contact Person _____
 26 Address _____
 27 Phone Number _____
 28 B. Regular periodic assessments: \$_____ per []Month []Year []Other _____
 29
 30 *C. Are there any pending or proposed special
 31 assessments? []Yes []No []Unknown
 32 D. Are there shared "common areas" or joint
 33 maintenance agreements for facilities like
 34 walls, fences, pools, tennis courts, walkways
 35 or other areas co-owned in undivided interest
 36 with others? []Yes []No []Unknown
 37 E. Is the Home Owners' Association or other
 38 governing entity a party to pending litigation
 39 or subject to an unsatisfied judgment? []Yes []No []Unknown []NA
 40 F. Is the property in violation of recorded
 41 covenants, conditions and restrictions or in
 42 violation of other bylaws or governing rules,
 43 whether recorded or not? []Yes []No []Unknown []NA
 44
 45 8. GENERAL

- 1 A. Are there problems with settling, soil,
- 2 standing water or drainage on the property
- 3 or in the immediate area?]Yes]No]Unknown
- 4 B. Does the property contain fill?]Yes]No]Unknown
- 5 C. Is there any material damage to the property or
- 6 any of the structure(s) from fire, wind, floods,
- 7 beach movements, earthquake, expansive soils
- 8 or landslides?]Yes]No]Unknown
- 9 D. Is the property in a designated floodplain?]Yes]No]Unknown
- 10 E. Is the property in a designated slide or other
- 11 geologic hazard zone?]Yes]No]Unknown
- 12 *F. Has any portion of the property been tested
- 13 or treated for asbestos, formaldehyde, radon
- 14 gas, lead-based paint, mold, fuel or chemical
- 15 storage tanks or contaminated soil or water?]Yes]No]Unknown
- 16 G. Are there any tanks or underground storage
- 17 tanks (e.g., septic, chemical, fuel, etc.)
- 18 on the property?]Yes]No]Unknown
- 19 H. Has the property ever been used as an illegal
- 20 drug manufacturing or distribution site?]Yes]No]Unknown
- 21 *If yes, was a Certificate of Fitness issued?]Yes]No]Unknown

22

23 9. FULL DISCLOSURE BY SELLERS

- 24 *A. Are there any other material defects
- 25 affecting this property or its value
- 26 that a prospective buyer should
- 27 know about?]Yes]No

28 *If yes, describe the defect on attached sheet

29 and explain the frequency and extent of the

30 problem and any insurance claims, repairs or

31 remediation.

32 B. Verification:

33 The foregoing answers and attached explanations (if any) are complete and correct to

34 the best of my/our knowledge and I/we have received a copy of this disclosure statement.

35 I/we authorize my/our agents to deliver a copy of this disclosure statement to all

36 prospective buyers of the property or their agents.

37

38 Seller(s) signature:

39

40 SELLER _____ DATE _____

41

42 SELLER _____ DATE _____

43

44

45

1 II. BUYER'S ACKNOWLEDGMENT

2
3 A. As buyer(s), I/we acknowledge the duty to pay diligent attention to any material defects that are
4 known to me/us or can be known by me/us by utilizing diligent attention and observation.

5
6 B. Each buyer acknowledges and understands that the disclosures set forth in this statement and in
7 any amendments to this statement are made only by the seller and are not the representations of
8 any financial institution that may have made or may make a loan pertaining to the property, or that
9 may have or take a security interest in the property, or of any real estate licensee engaged by the
10 seller or buyer. A financial institution or real estate licensee is not bound by and has no liability
11 with respect to any representation, misrepresentation, omission, error or inaccuracy contained in
12 another party's disclosure statement required by this section or any amendment to the disclosure
13 statement.

14
15 C. Buyer (which term includes all persons signing the "buyer's acknowledgment" portion of this
16 disclosure statement below) hereby acknowledges receipt of a copy of this disclosure statement (in-
17 cluding attachments, if any) bearing seller's signature(s).

18
19 DISCLOSURES, IF ANY, CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON
20 THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DIS-
21 CLOSURE. IF THE SELLER HAS FILLED OUT SECTION 2 OF THIS FORM, YOU, THE BUYER,
22 HAVE FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS DISCLOSURE STATEMENT TO
23 REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT
24 OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S DISCLOSURE UNLESS
25 YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

26
27 BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS SELLER'S PROPERTY
28 DISCLOSURE STATEMENT.

29
30 BUYER _____ DATE _____

31
32 BUYER _____ DATE _____

33
34 Agent receiving disclosure statement on buyer's behalf to sign and date:

35
36 _____ Real Estate Licensee

37
38 _____ Real Estate Firm

39
40 Date received by agent _____

41 _____

42
43 **SECTION 19. ORS 468A.470, 468A.475, 468A.480, 468A.510 and 468A.520 are repealed.**

44 **SECTION 20. (1) Except as provided in subsection (2) of this section, the amendments to**
45 **ORS 468A.505 by section 9 of this 2007 Act become operative on August 1, 2008.**

1 **(2) The amendments to ORS 468A.505 by section 9 of this 2007 Act become operative on**
2 **the effective date of this 2007 Act for the purpose of adopting rules under ORS 468A.505.**

3 **SECTION 21.** **Until the Environmental Quality Commission first adopts rules pursuant**
4 **to ORS 468A.465 as amended by section 2 of this 2007 Act, a person may sell or offer to sell**
5 **a new solid fuel burning device in Oregon that has been certified to meet emission perform-**
6 **ance standards adopted by the commission pursuant to ORS chapter 468A on or after July**
7 **1, 1986, and before the effective date of this 2007 Act.**

8
