

House Bill 3450

Sponsored by Representative TOMEI; Representatives BARKER, BUCKLEY, DEMBROW, GALIZIO, HOLVEY, KAHL, RILEY, SHIELDS, WITT (at the request of Deborah Kafoury)

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**.

Prohibits transferring title to single-family dwelling or multifamily housing that has carbon monoxide source unless dwelling or housing is equipped with carbon monoxide detector. Prohibits issuing certificate of occupancy for dwelling or housing having carbon monoxide source unless dwelling or housing is equipped with detector.

Prohibits landlord from renting out dwelling unit that has carbon monoxide source or is located within structure that has carbon monoxide source, unless dwelling unit is equipped with carbon monoxide detector. Imposes duty on landlord to repair and maintain detector. Prohibits removing or tampering with detector. Makes violations subject to civil penalty of not more than \$250.

Requires tenant of rental dwelling unit to periodically test carbon monoxide detector.

A BILL FOR AN ACT

1
2 Relating to carbon monoxide; creating new provisions; and amending ORS 90.302, 90.320 and 90.325.

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

4 **SECTION 1. As used in sections 1 to 7 of this 2009 Act, unless the context requires otherwise:**

5
6 (1) **"Carbon monoxide detector" means a device that:**

7 (a) **Detects carbon monoxide;**

8 (b) **Produces a distinctive audible alarm when carbon monoxide is detected;**

9 (c) **Conforms to State Fire Marshal rules;**

10 (d) **Is listed by Underwriters Laboratories or any other nationally recognized testing**
11 **laboratory; and**

12 (e) **Operates as a distinct unit or as part of a system in which two or more single station**
13 **units are wired to operate in conjunction with each other.**

14 (2) **"Carbon monoxide source" means:**

15 (a) **A heater, fireplace or cooking source that uses coal, kerosene, petroleum products,**
16 **wood or other fuels that emit carbon monoxide as a by-product of combustion; or**

17 (b) **An attached garage.**

18 (3) **"Multifamily housing":**

19 (a) **Except as provided in paragraph (b) of this subsection, means a building in which two**
20 **or more residential units each have space for eating, living and sleeping and permanent**
21 **provisions for cooking and sanitation.**

22 (b) **Does not mean a long term care facility or a hospital, both as defined in ORS 442.015,**
23 **a hotel as defined in ORS 699.005, a dormitory or a state institution.**

24 (4) **"Single-family dwelling" means a building in which only one residential unit has space**
25 **for eating, living and sleeping and permanent provisions for cooking and sanitation.**

26 **SECTION 2. (1) A person may not convey fee title to a single-family dwelling or multi-**
27 **family housing that contains a carbon monoxide source, or transfer possession under a land**

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 sale contract of a single-family dwelling or multifamily housing that contains a carbon
 2 monoxide source, unless one or more properly functioning carbon monoxide detectors are
 3 installed in the dwelling or housing at locations that provide carbon monoxide detection for
 4 all sleeping areas of the dwelling or housing.

5 (2) A carbon monoxide detector in a single-family dwelling or multifamily housing de-
 6 scribed in subsection (1) of this section must be installed in conformance with rules of the
 7 State Fire Marshal.

8 (3) Violation of this section or a rule adopted by the State Fire Marshal does not invali-
 9 date any sale or transfer of possession of a single-family dwelling or multifamily housing.

10 **SECTION 3.** A purchaser or transferee of a single-family dwelling or multifamily housing
 11 who is aggrieved by a violation of section 2 of this 2009 Act or of a rule adopted under section
 12 4 of this 2009 Act may bring an individual action in an appropriate court to recover the
 13 greater of actual damages or \$250 per residential unit. In any action brought under this
 14 section, the court may award to a prevailing plaintiff, in addition to the relief provided in this
 15 section, reasonable attorney fees at trial and on appeal and costs. Actions brought under this
 16 section must be commenced within one year after the date of sale or transfer.

17 **SECTION 4.** The State Fire Marshal shall adopt rules establishing standards for carbon
 18 monoxide detectors in single-family dwellings and multifamily housing. The rules adopted by
 19 the State Fire Marshal may include, but need not be limited to, rules establishing standards
 20 for the installation, design, location, inspection, testing and maintenance of carbon monoxide
 21 detectors. In adopting the rules, the State Fire Marshal shall give consideration to state
 22 building code requirements and any standards adopted by national fire safety organizations.

23 **SECTION 5.** (1) If a rental dwelling unit that is subject to ORS chapter 90 has a carbon
 24 monoxide source or is located within a structure having a carbon monoxide source, the
 25 landlord shall ensure that the dwelling unit has one or more carbon monoxide detectors in-
 26 stalled in compliance with State Fire Marshal rules. The landlord shall provide the tenant
 27 of the dwelling unit with a written notice containing instructions for testing of the detectors.
 28 The landlord shall provide the written notice to the tenant no later than at the time that the
 29 tenant first takes possession of the premises.

30 (2) If the landlord receives written notice from the tenant of a deficiency in a carbon
 31 monoxide detector, other than dead batteries, the landlord shall repair or replace the detec-
 32 tor. Supplying and maintaining a carbon monoxide detector required under this section is a
 33 habitable condition requirement under ORS 90.320. However, the time for correcting the
 34 condition shall be as provided in section 7 of this 2009 Act and not as provided in ORS 90.360.

35 **SECTION 6.** (1) As used in this section, “tamper” includes, but is not limited to, the re-
 36 moval of working batteries.

37 (2) Except as otherwise provided in this section, a person may not remove or tamper with
 38 a carbon monoxide detector installed in a single-family dwelling or multifamily housing. This
 39 section does not prohibit the removal of, or tampering with, a carbon monoxide detector:

40 (a) For the purpose of replacing a defective detector or conforming the installation of the
 41 detector with State Fire Marshal rules;

42 (b) In a dwelling or housing that is being demolished or converted to nonresidential use;

43 (c) For the period that the removal or tampering is necessary to an active process of
 44 remodeling or renovating the installation location; or

45 (d) As allowed by State Fire Marshal rules or by written permission from the State Fire

1 Marshal or a local fire official.

2 **SECTION 7.** (1) If a rental dwelling unit has a carbon monoxide source or is located
 3 within a structure having a carbon monoxide source and the rental dwelling unit does not
 4 contain one or more properly installed carbon monoxide detectors as required by section 5
 5 of this 2009 Act, or if the carbon monoxide detector is not operating properly and the land-
 6 lord does not install a properly operating carbon monoxide detector within 10 days after re-
 7 ceiving written notice from the tenant of the deficiency, the tenant may file a complaint with
 8 the State Fire Marshal or with a local fire official that is an assistant to the State Fire
 9 Marshal under ORS 476.060. Upon receipt of the complaint, the State Fire Marshal or local
 10 fire official shall investigate the alleged violation.

11 (2) If the State Fire Marshal or local fire official finds that a rental dwelling unit or a
 12 structure containing a rental dwelling unit has a carbon monoxide source and that the
 13 landlord has failed to properly install one or more operating carbon monoxide detectors in
 14 the rental dwelling unit, the State Fire Marshal or local fire official may issue a notice of
 15 deficiency that imposes a civil penalty and specifies a period of not less than 10 days for
 16 correction of the condition. A complaint under subsection (1) of this section is not a pre-
 17 requisite to the issuance of a notice of deficiency under this subsection.

18 (3) If a landlord fails to correct a condition identified in a notice of deficiency within the
 19 time specified by the notice, the State Fire Marshal or local fire official may consider the
 20 continuation of the condition to be a separate violation that is subject to an additional notice
 21 of deficiency and civil penalty.

22 **SECTION 8.** (1) The State Fire Marshal may impose a civil penalty, not to exceed \$250,
 23 for a violation of section 5, 6 or 7 of this 2009 Act or of a rule adopted under section 4 of this
 24 2009 Act.

25 (2) Sections 5, 6 and 7 of this 2009 Act and rules adopted under section 4 of this 2009 Act
 26 do not create a cause of action and may not be asserted as the basis for a per se negligence
 27 claim.

28 **SECTION 9.** Section 10 of this 2009 Act is added to and made a part of ORS chapter 455.

29 **SECTION 10.** (1) As used in this section, “carbon monoxide detector” and “carbon
 30 monoxide source” have the meanings given those terms in section 1 of this 2009 Act.

31 (2) The Department of Consumer and Business Services or a municipality may not issue
 32 a certificate of occupancy for a new single-family dwelling or multifamily housing that the
 33 plans show to have a carbon monoxide source unless a building official, inspector, the State
 34 Fire Marshal or a local fire official has confirmed that the dwelling or housing does not ac-
 35 tually have a carbon monoxide source or that the dwelling or housing contains one or more
 36 properly functioning carbon monoxide detectors installed as required by State Fire Marshal
 37 rules.

38 **SECTION 11.** Section 12 of this 2009 Act is added to and made a part of ORS 90.100 to
 39 90.465.

40 **SECTION 12.** (1) As used in this section, “carbon monoxide detector” and “carbon
 41 monoxide source” have the meanings given those terms in section 1 of this 2009 Act.

42 (2) A landlord may not enter into a rental agreement creating a new tenancy in a dwell-
 43 ing unit that contains a carbon monoxide source or that is within a structure that contains
 44 a carbon monoxide source unless, at the time the tenant takes possession of the dwelling
 45 unit, the dwelling unit contains one or more properly functioning carbon monoxide detectors

1 installed in compliance with State Fire Marshal rules. The landlord shall provide a new ten-
 2 ant with detector testing instructions as described in section 5 of this 2009 Act.

3 (3) If a carbon monoxide detector is battery operated or has a battery-operated backup
 4 system, the landlord shall supply working batteries for the detector at the beginning of a new
 5 tenancy.

6 (4) Except for damages expressly allowed under this chapter to remedy a violation of ORS
 7 90.320, this section does not create a cause of action regarding the installation, operation,
 8 maintenance or repair of a carbon monoxide detector and may not be asserted as the basis
 9 for a per se negligence claim.

10 **SECTION 13.** ORS 90.302 is amended to read:

11 90.302. (1) Except as specifically provided otherwise in this chapter, a landlord may require the
 12 payment of a fee, if the fee is related to and designated as being charged for a specific reasonably
 13 anticipated landlord expense. A landlord shall provide a receipt for the fee, and the receipt or a
 14 written rental agreement shall describe the anticipated landlord expense to be covered by the fee
 15 and describe the landlord's duties under subsection (4) of this section.

16 (2) Except as provided in subsection (3) of this section, a landlord may not charge a fee more
 17 than once, at the beginning of or during the tenancy.

18 (3) A landlord may charge a fee more than once, at the beginning of or during the tenancy, for:

19 (a) A late rent payment, pursuant to ORS 90.260;

20 (b) A dishonored check, pursuant to ORS 30.701 (5);

21 (c) Removal or tampering with a properly functioning smoke alarm, [or] smoke detector **or**
 22 **carbon monoxide detector**, as provided in ORS 90.325 [(7)] (2), if a written rental agreement pro-
 23 vides for a fee for that removal or tampering; and

24 (d) Any other noncompliance by the tenant with a written rental agreement that provides for a
 25 fee for that noncompliance, provided that the fee may not be excessive.

26 (4) A landlord may not be required to account for or return to the tenant any fee. Upon termi-
 27 nation of a tenancy and delivery of possession, a landlord shall first apply any fee to the related
 28 landlord expense as reasonably assessed against the tenant, before applying the tenant's security
 29 deposit, if any, to that expense.

30 (5) Nonpayment of a fee is not grounds for termination of a rental agreement for nonpayment
 31 of rent under ORS 90.394, but is grounds for termination of a rental agreement for cause under ORS
 32 90.392 or 90.630 (1).

33 (6) This section does not apply to attorney fees awarded pursuant to ORS 90.255 or to applicant
 34 screening charges paid pursuant to ORS 90.295.

35 **SECTION 14.** ORS 90.320 is amended to read:

36 90.320. (1) A landlord shall at all times during the tenancy maintain the dwelling unit in a
 37 habitable condition. For purposes of this section, a dwelling unit shall be considered uninhabitable if
 38 it substantially lacks:

39 (a) Effective waterproofing and weather protection of roof and exterior walls, including windows
 40 and doors;

41 (b) Plumbing facilities [which] **that** conform to applicable law in effect at the time of installa-
 42 tion, and maintained in good working order;

43 (c) A water supply approved under applicable law, [which] **that** is:

44 (A) Under the control of the tenant or landlord and is capable of producing hot and cold running
 45 water;

- 1 (B) Furnished to appropriate fixtures;
- 2 (C) Connected to a sewage disposal system approved under applicable law; and
- 3 (D) Maintained so as to provide safe drinking water and to be in good working order to the
- 4 extent that the system can be controlled by the landlord;
- 5 (d) Adequate heating facilities *[which]* **that** conform to applicable law at the time of installation
- 6 and maintained in good working order;
- 7 (e) Electrical lighting with wiring and electrical equipment *[which]* **that** conform to applicable
- 8 law at the time of installation and maintained in good working order;
- 9 (f) Buildings, grounds and appurtenances at the time of the commencement of the rental agree-
- 10 ment in every part safe for normal and reasonably foreseeable uses, clean, sanitary and free from
- 11 all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control
- 12 of the landlord kept in every part safe for normal and reasonably foreseeable uses, clean, sanitary
- 13 and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin;
- 14 (g) Except as otherwise provided by local ordinance or by written agreement between the land-
- 15 lord and the tenant, an adequate number of appropriate receptacles for garbage and rubbish in clean
- 16 condition and good repair at the time of the commencement of the rental agreement, and the land-
- 17 lord shall provide and maintain appropriate serviceable receptacles thereafter and arrange for their
- 18 removal;
- 19 (h) Floors, walls, ceilings, stairways and railings maintained in good repair;
- 20 (i) Ventilating, air conditioning and other facilities and appliances, including elevators, main-
- 21 tained in good repair if supplied or required to be supplied by the landlord;
- 22 (j) Safety from fire hazards, including a working smoke alarm or smoke detector, with working
- 23 batteries if solely battery-operated, provided only at the beginning of any new tenancy when the
- 24 tenant first takes possession of the premises, as provided in ORS 479.270, but not to include the
- 25 tenant's testing of the smoke alarm or smoke detector as provided in ORS 90.325 [(6)] (1); *[or]*
- 26 **(k) Safety from carbon monoxide if the dwelling unit or the structure in which the**
- 27 **dwelling unit is a part contains a carbon monoxide source as defined in section 1 of this 2009**
- 28 **Act, but not to include the tenant's testing of the carbon monoxide detector as provided in**
- 29 **ORS 90.325 (1); or**
- 30 *[(k)]* (L) Working locks for all dwelling entrance doors, and, unless contrary to applicable law,
- 31 latches for all windows, by which access may be had to that portion of the premises *[which]* **that**
- 32 the tenant is entitled under the rental agreement to occupy to the exclusion of others and keys for
- 33 *[such]* **those** locks *[which]* **that** require keys.
- 34 (2) The landlord and tenant may agree in writing that the tenant is to perform specified repairs,
- 35 maintenance tasks and minor remodeling only if:
- 36 (a) The agreement of the parties is entered into in good faith and not for the purpose of evading
- 37 the obligations of the landlord;
- 38 (b) The agreement does not diminish the obligations of the landlord to other tenants in the
- 39 premises; and
- 40 (c) The terms and conditions of the agreement are clearly and fairly disclosed and adequate
- 41 consideration for the agreement is specifically stated.
- 42 (3) Any provisions of this section that reasonably apply only to a structure that is used as a
- 43 home, residence or sleeping place shall not apply to a manufactured dwelling, recreational vehicle
- 44 or floating home where the tenant owns the manufactured dwelling, recreational vehicle or floating
- 45 home, rents the space and, in the case of a dwelling or home, the space is not in a facility. Manu-

1 factured dwelling or floating home tenancies in which the tenant owns the dwelling or home and
 2 rents space in a facility shall be governed by ORS 90.730, not by this section.

3 **SECTION 15.** ORS 90.325 is amended to read:

4 90.325. (1) The tenant shall:

5 [(1)] (a) Use the parts of the premises including the living room, bedroom, kitchen, bathroom and
 6 dining room in a reasonable manner considering the purposes for which they were designed and in-
 7 tended.[;]

8 [(2)] (b) Keep all areas of the premises under control of the tenant in every part as clean, sani-
 9 tary and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, as the
 10 condition of the premises permits and to the extent that the tenant is responsible for causing the
 11 problem. The tenant shall cooperate to a reasonable extent in assisting the landlord in any reason-
 12 able effort to remedy the problem.[;]

13 [(3)] (c) Dispose from the dwelling unit all ashes, garbage, rubbish and other waste in a clean,
 14 safe and legal manner. With regard to needles, syringes and other infectious waste, as defined in
 15 ORS 459.386, the tenant may not dispose of these items by placing them in garbage receptacles or
 16 in any other place or manner except as authorized by state and local governmental agencies[;].

17 [(4)] (d) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their
 18 condition permits.[;]

19 [(5)] (e) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air
 20 conditioning and other facilities and appliances including elevators in the premises.[;]

21 [(6)] (f) Test at least once every six months and replace batteries as needed in any smoke
 22 alarm, [or] smoke detector **or carbon monoxide detector** provided by the landlord and notify the
 23 landlord in writing of any operating deficiencies. [as described in ORS 479.275;]

24 [(7) *Not remove or tamper with a properly functioning smoke alarm or smoke detector, including*
 25 *removing any working batteries, as provided in ORS 479.300;*]

26 [(8) *Not deliberately or negligently destroy, deface, damage, impair or remove any part of the*
 27 *premises or knowingly permit any person to do so; and]*

28 [(9)] (g) Behave and require other persons on the premises with the consent of the tenant to
 29 behave in a manner that will not disturb the peaceful enjoyment of the premises by neighbors.

30 **(2) A tenant may not:**

31 **(a) Remove or tamper with a smoke alarm, smoke detector or carbon monoxide detector**
 32 **as described in ORS 479.300 or section 6 of this 2009 Act.**

33 **(b) Deliberately or negligently destroy, deface, damage, impair or remove any part of the**
 34 **premises or knowingly permit any person to do so.**

35 **SECTION 16.** Section 12 of this 2009 Act and the amendments to ORS 90.320 by section
 36 14 of this 2009 Act apply to rental agreements that a landlord enters into on or after the
 37 effective date of this 2009 Act.