

Enrolled Senate Bill 102

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 Governor Theodore R. Kulongoski for Department of Environmental Quality)

CHAPTER

AN ACT

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

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

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

468A.460. In the interest of the public health and welfare it is *[declared to be the public]* **the policy of the State of Oregon** to control, reduce and prevent air pollution caused by *[woodstove emissions]* **solid fuel burning devices**. The Legislative Assembly declares *[it to be the public]* **that it is also the policy of the State of Oregon** to reduce *[woodstove]* **solid fuel burning device** emissions by encouraging the Department of Environmental Quality to continue efforts to educate the public about the **air quality** effects of *[woodstove]* **those emissions** *[and the desirability of achieving better woodstove]*, **by ensuring that solid fuel burning devices used in Oregon meet** emission performance *[and heating efficiency]* **standards established under ORS 468A.465 and by ensuring compliance with ORS 468A.460 to 468A.480.**

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

468A.465. (1) *[On and after July 1, 1986,]* A person may not advertise to sell, offer to sell or sell a new *[woodstove]* **solid fuel burning device** in Oregon unless^[:], **pursuant to rules adopted by the Environmental Quality Commission, the Department of Environmental Quality certifies that the device meets emission performance standards, certification labeling standards and all other requirements set forth in rules adopted by the commission. Before adopting emission performance standards under this section, the commission shall consider any emission performance standards proposed or adopted by the United States Environmental Protection Agency.**

(2) **In addition to devices certified under subsection (1) of this section, the department may certify new solid fuel burning devices that have been certified by the United States Environmental Protection Agency pursuant to:**

(a) **40 C.F.R. part 60, subpart AAA, as in effect on the date the commission first adopts rules under subsection (1) of this section; or**

(b) **Any equivalent or more stringent standard adopted by the United States Environmental Protection Agency subsequent to such date.**

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

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

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

SECTION 2a. Notwithstanding ORS 468A.465 (1), until December 31, 2010, the Environmental Quality Commission may not adopt an emission performance standard for any solid fuel burning device that is more stringent than the emission performance standard adopted by the United States Environmental Protection Agency for the same device.

SECTION 3. Until the Environmental Quality Commission first adopts rules pursuant to ORS 468A.465 as amended by section 2 of this 2009 Act, a person may advertise to sell, offer to sell or sell a new solid fuel burning device in Oregon that has been certified to meet emission performance standards adopted by the commission pursuant to ORS chapter 468A that are in effect on the effective date of this 2009 Act.

SECTION 4. ORS 468A.485 is amended to read:

468A.485. As used in ORS [468A.490] **468A.460 to 468A.480:**

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

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

(1) **“Masonry heater”** has the meaning given that term in the American Society for Testing and Materials (ASTM) E1602-03, Standard Guide for Construction of Solid Fuel Burning Masonry Heaters, as in effect on the effective date of this 2009 Act, or the meaning given that term by rule of the Environmental Quality Commission.

(2) **“Pellet stove”** means a heating device that uses wood pellets, or other biomass fuels designed for use in pellet stoves, as its primary source of fuel.

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

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

(b) **“Solid fuel burning device”** does not include:

(A) Masonry fireplaces built on homesites, or factory-built fireplaces, that are designed to be used with an open combustion chamber, that are without features to control air-to-fuel ratios and that meet minimum emission performance standards adopted by the commission, or all masonry fireplaces and factory-built fireplaces if the commission does not adopt any standards;

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

(C) Pellet stoves that meet minimum emission performance standards adopted by the commission, or all pellet stoves if the commission does not adopt any standards;

(D) Masonry heaters that meet minimum emission performance standards adopted by the commission, or all masonry heaters if the commission does not adopt any standards;

(E) Central, wood-fired furnaces that are indoors, ducted and thermostatically controlled, that have a dedicated cold air inlet and a dedicated hot air outlet that connect to the heating ductwork for the entire residential structure and that meet minimum emission performance standards adopted by the commission, or all central, wood-fired furnaces if the commission does not adopt any standards; and

(F) Other solid fuel burning devices identified in rules adopted by the commission.

(5)(a) **“Trash burner”** means any equipment that is used to dispose of waste by burning.

(b) **“Trash burner”** does not include an air contamination source that has been issued an air quality permit as described in ORS 468A.040.

(6) "Treated wood" means wood of any species that has been chemically impregnated, painted or similarly modified to prevent weathering and deterioration.

SECTION 5. Section 6 of this 2009 Act is added to and made a part of ORS 468A.460 to 468A.480.

SECTION 6. A person may not cause or allow any of the following materials to be burned in a solid fuel burning device, a masonry heater, a pellet stove, a trash burner or any device described in ORS 468A.485 (4)(b):

- (1) Garbage;
- (2) Treated wood;
- (3) Plastic or plastic products;
- (4) Rubber or rubber products;
- (5) Animal carcasses;
- (6) Products that contain asphalt;
- (7) Waste petroleum products;
- (8) Paint;
- (9) Chemicals;
- (10) Paper or paper products, except for paper used to kindle a fire; or
- (11) Any other materials described in rules adopted by the commission.

SECTION 7. ORS 468A.490 is amended to read:

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

(2) All moneys appropriated or received as gifts or grants for the purposes of this section shall be credited to the Residential [*Wood*] **Solid Fuel** Heating Air Quality Improvement Fund.

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

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

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

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

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

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

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

(a) Pay all costs incurred by the department for evaluating projects and programs, including projects and programs proposed by local communities or qualifying organizations, for project management and oversight of funds awarded for projects and programs selected in

accordance with this section and for documenting the benefit to air quality from such projects;

(b) Fund the program established under subsection (5) of this section;

(c) Fund activities to enhance enforcement of ORS 468A.460 to 468A.480;

(d) Fund public education programs related to compliance with ORS 468A.460 to 468A.480; and

(e) Fund public education programs related to the benefits of the use of solid fuel burning devices certified pursuant to ORS 468A.460 to 468A.480.

(5) The department shall use moneys available under subsection (4) of this section to establish a program designed to reduce the emission of air contaminants by providing grants, loans or other subsidies for the replacement or removal of solid fuel burning devices that were not certified by the department pursuant to ORS 468A.465. In addition to any other requirements established by rules adopted by the Environmental Quality Commission, the program shall provide that:

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

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

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

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

(6) The department may enter into an agreement with a local government or a regional authority in order to implement the program established under subsection (5) of this section.

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

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

[(b) All woodstoves removed are destroyed.]

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

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

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

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

SECTION 8. ORS 468A.495 is amended to read:

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

(a) By the United States Environmental Protection Agency pursuant to 40 C.F.R. part 60, subpart AAA; or

(b) By the Department of Environmental Quality pursuant to ORS 468A.465.

(2) Notwithstanding subsection (1) of this section, if pursuant to ORS 468A.465 the Environmental Quality Commission adopts more stringent standards than those described in subsection (1) of this section for the certification of new solid fuel burning devices, the commission by rule may prohibit the installation of some or all used solid fuel burning devices certified for sale as new under less stringent standards if:

(a) The used solid fuel burning devices were manufactured at least 15 years prior to the date on which the commission adopts more stringent standards; or

(b) The used solid fuel burning devices are located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

SECTION 9. ORS 468A.500 is amended to read:

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

(a) By the United States Environmental Protection Agency pursuant to 40 C.F.R. part 60, subpart AAA; or

(b) By the Department of Environmental Quality pursuant to ORS 468A.465.

(2) Notwithstanding subsection (1) of this section, if pursuant to ORS 468A.465 the Environmental Quality Commission adopts more stringent standards than those described in subsection (1) of this section for the certification of new solid fuel burning devices, the commission by rule may prohibit the advertisement for sale, offer to sell or sale of some or all used solid fuel burning devices certified for sale as new under less stringent standards if:

(a) The used solid fuel burning devices were manufactured at least 15 years prior to the date on which the commission adopts more stringent standards; or

(b) The used solid fuel burning devices are located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

SECTION 10. ORS 468A.505 is amended to read:

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

(1) **In connection with the sale of a residential structure, all used solid fuel burning devices, other than cookstoves, in the residential structure or on the real property sold with the residential structure, must be removed and destroyed unless the solid fuel burning devices were certified for sale as new:**

(a) By the United States Environmental Protection Agency pursuant to 40 C.F.R. part 60, subpart AAA; or

(b) By the Department of Environmental Quality pursuant to ORS 468A.465.

(2) Notwithstanding subsection (1) of this section, if pursuant to ORS 468A.465 the Environmental Quality Commission adopts more stringent standards than those described in subsection (1) of this section for the certification of new solid fuel burning devices, the

commission by rule may require the removal and destruction of some or all used solid fuel burning devices certified for sale as new under less stringent standards if:

(a) The used solid fuel burning devices were manufactured at least 15 years prior to the date on which the commission adopts more stringent standards; or

(b) The used solid fuel burning devices are located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

(3) This section does not apply to:

(a) Masonry heaters;

(b) Masonry fireplaces described in ORS 468A.485 (4)(b)(A); and

(c) Central, wood-fired furnaces described in ORS 468A.485 (4)(b)(E).

(4) The removal and destruction of a used solid fuel burning device under this section is the responsibility of the seller of the residential structure, unless the seller and buyer agree in writing that it is the buyer's responsibility. If the seller retains responsibility, the seller shall remove and destroy the device prior to the closing date of the sale of the residential structure. If the buyer accepts responsibility, the buyer shall remove and destroy the device within 30 days after the closing date of the sale of the residential structure.

(5) The person responsible for removal and destruction of a used solid fuel burning device under this section shall provide to the department written confirmation of the removal and destruction, pursuant to rules adopted by the commission.

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

SECTION 11. (1) Except as provided in subsection (2) of this section, the amendments to ORS 468A.505 by section 10 of this 2009 Act become operative on August 1, 2010.

(2) The amendments to ORS 468A.505 by section 10 of this 2009 Act become operative on the effective date of this 2009 Act for the purpose of adopting rules under ORS 468A.505.

SECTION 12. ORS 468A.515 is amended to read:

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

[(1)] (2) Any programs adopted by the [Environmental Quality] commission pursuant to subsection (1) of this section to curtail residential [wood] solid fuel heating during periods of air stagnation shall provide for two stages of curtailment based on the severity of projected air quality conditions. Except as provided in subsection [(2)] (4) of this section, the programs shall apply to all [woodburning fireplaces, woodstoves and appliances] heating by means of solid fuel, including but not limited to solid fuel burning devices, masonry heaters, pellet stoves, trash burners and all devices described in ORS 468A.485 (4)(b). The programs shall provide that [woodstoves that were certified for sale as new on or after July 1, 1986, under ORS 468A.480 (1) shall be curtailed only at the second stage to insure attainment of air quality standards.] use of a solid fuel burning device, masonry fireplace or other solid fuel burning device identified in rules adopted by the commission be curtailed only at the more severe stage of projected air quality if the solid fuel burning device, masonry fireplace or other solid fuel burning device identified in rules adopted by the commission was certified for sale as new:

(a) By the United States Environmental Protection Agency pursuant to 40 C.F.R. part 60, subpart AAA; or

(b) By the department pursuant to ORS 468A.465.

(3) Notwithstanding subsection (2) of this section, if pursuant to ORS 468A.465 the commission adopts more stringent standards than those described in subsection (2) of this section for the certification of new solid fuel burning devices, the commission by rule may require curtailment during the less severe stage of projected air quality of some or all solid fuel burning devices certified for sale as new under less stringent standards if:

(a) The solid fuel burning devices were manufactured at least 15 years prior to the date on which the commission adopts more stringent standards; or

(b) The solid fuel burning devices are located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

[2] (4) Programs adopted by the commission to curtail residential [wood] solid fuel heating during periods of air stagnation [shall] do not apply to:

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

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

(c) [Wood burning] Pellet stoves, unless the pellet stove is located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

[3] If a local government or regional authority has not adopted or is not adequately implementing the required curtailment program, the Environmental Quality Commission may adopt by rule and the Department of Environmental Quality may operate and enforce a program to curtail residential wood heating during periods of air stagnation as specified in subsection (1) of this section in any area of the state where such a program is required under the Clean Air Act. The department shall suspend operation and enforcement of a program adopted under this subsection upon a determination by the department that the local government or regional air quality authority has adopted and is adequately implementing the required curtailment program.]

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

SECTION 13. ORS 468A.005 is amended to read:

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

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

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

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

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

(5) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a du-

ration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

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

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

SECTION 14. ORS 468A.020 is amended to read:

468A.020. (1) Except as provided in subsection (2) of this section, the air quality laws contained in ORS chapters 468, 468A and 468B do not apply to:

(a) Agricultural operations, including but not limited to:

(A) Growing or harvesting crops;

(B) Raising fowl or animals;

(C) Clearing or grading agricultural land;

(D) Propagating and raising nursery stock;

(E) Propane flaming of mint stubble; and

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

(b) Equipment used in agricultural operations, except boilers used in connection with propagating and raising nursery stock.

(c) Barbecue equipment used in connection with any residence.

(d) Heating equipment in or used in connection with residences used exclusively as dwellings for not more than four families, except [*woodstoves which shall be*] **solid fuel burning devices, as defined in ORS 468A.485, that are** subject to regulation under this section[,] **and ORS 468A.140 and 468A.460 to 468A.480[, 468A.490 and 468A.515].**

(e) Fires set or permitted by any public agency when such fire is set or permitted in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, or instruction of employees in the methods of fire fighting, which in the opinion of the agency is necessary.

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

(2) Subsection (1) of this section does not apply to the extent:

(a) Otherwise provided in ORS 468A.555 to 468A.620, 468A.790, 468A.992, 476.380 and 478.960;

(b) Necessary to implement the federal Clean Air Act (P.L. 88-206 as amended) under ORS 468A.025, 468A.030, 468A.035, 468A.040, 468A.045 and 468A.300 to 468A.330; or

(c) Necessary for the Environmental Quality Commission, in the commission's discretion, to implement a recommendation of the Task Force on Dairy Air Quality created under section 3, chapter 799, Oregon Laws 2007, for the regulation of dairy air contaminant emissions.

SECTION 15. ORS 468A.300 is amended to read:

468A.300. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330, 468A.415, 468A.420 and [468A.485 to 468A.515] **468A.460 to 468A.480:**

(1) "Administrator" means the administrator of the United States Environmental Protection Agency.

(2) "Clean Air Act" means P.L. 88-206 as amended.

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

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

(5) "Title V" means Title V of the Clean Air Act.

SECTION 16. Section 17 of this 2009 Act is added to and made a part of ORS 105.462 to 105.490.

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 excluded, 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 SELLER(S) CONCERNING THE CONDITION OF THE PROPERTY LOCATED AT _____ ("THE PROPERTY").

DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE. BUYER HAS FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO REVOKE BUYER'S OFFER BY DELIVERING BUYER'S SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S DISCLOSURE STATEMENT, UNLESS BUYER WAIVES THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY, BUYER IS ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED SPECIALIST TO INSPECT THE PROPERTY ON BUYER'S BEHALF INCLUDING, FOR EXAMPLE, ONE OR MORE OF THE FOLLOWING: ARCHITECTS, ENGINEERS, PLUMBERS, ELECTRICIANS, ROOFERS, ENVIRONMENTAL INSPECTORS, BUILDING INSPECTORS, CERTIFIED HOME INSPECTORS, OR PEST AND DRY ROT INSPECTORS.

Seller _____ is/ _____ is not occupying the property.

I. SELLER'S REPRESENTATIONS:

The following are representations made by the seller and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have or take a security interest in the property, or any real estate licensee engaged by the seller or the buyer.

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

1. TITLE

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

- *B. Is title to the property subject to any of the following:]Yes]No]Unknown
- (1) First right of refusal
- (2) Option
- (3) Lease or rental agreement
- (4) Other listing
- (5) Life estate?
- *C. Is the property being transferred an unlawfully established unit of land?]Yes]No]Unknown
- *D. Are there any encroachments, boundary agreements, boundary disputes or recent boundary changes?]Yes]No]Unknown
- *E. Are there any rights of way, easements, licenses, access limitations or claims that may affect your interest in the property?]Yes]No]Unknown
- *F. Are there any agreements for joint maintenance of an easement or right of way?]Yes]No]Unknown
- *G. Are there any governmental studies, designations, zoning overlays, surveys or notices that would affect the property?]Yes]No]Unknown
- *H. Are there any pending or existing governmental assessments against the property?]Yes]No]Unknown
- *I. Are there any zoning violations or nonconforming uses?]Yes]No]Unknown
- *J. Is there a boundary survey for the property?]Yes]No]Unknown
- *K. Are there any covenants, conditions, restrictions or private assessments that affect the property?]Yes]No]Unknown
- *L. Is the property subject to any special tax assessment or tax treatment that may result in levy of additional taxes if the property is sold?]Yes]No]Unknown

2. WATER

A. Household water

- (1) The source of the water is (check ALL that apply):

]Public]Community]Private
]Other _____

- (2) Water source information:

- *a. Does the water source require a water permit?]Yes]No]Unknown
If yes, do you have a permit?]Yes]No
- b. Is the water source located on the property?]Yes]No]Unknown
*If not, are there any written agreements for a shared water source?]Yes]No]Unknown]NA
- *c. Is there an easement (recorded or unrecorded) for your access to or maintenance of the water source?]Yes]No]Unknown
- d. If the source of water is from a well or spring, have you had any of the following in the past 12 months?]Flow test]Bacteria test
]Chemical contents test]Yes]No]Unknown]NA

- *e. Are there any water source plumbing problems or needed repairs? []Yes []No []Unknown
- (3) Are there any water treatment systems for the property? []Yes []No []Unknown
[]Leased []Owned
- B. Irrigation
- (1) Are there any [] water rights or [] other irrigation rights for the property? []Yes []No []Unknown
- * (2) If any exist, has the irrigation water been used during the last five-year period? []Yes []No []Unknown []NA
- * (3) Is there a water rights certificate or other written evidence available? []Yes []No []Unknown []NA
- C. Outdoor sprinkler system
- (1) Is there an outdoor sprinkler system for the property? []Yes []No []Unknown
- (2) Has a back flow valve been installed? []Yes []No []Unknown []NA
- (3) Is the outdoor sprinkler system operable? []Yes []No []Unknown []NA
3. SEWAGE SYSTEM
- A. Is the property connected to a public or community sewage system? []Yes []No []Unknown
- B. Are there any new public or community sewage systems proposed for the property? []Yes []No []Unknown
- C. Is the property connected to an on-site septic system?
If yes, was it installed by permit? []Yes []No []Unknown []NA
*Has the system been repaired or altered? []Yes []No []Unknown
Has the condition of the system been evaluated and a report issued? []Yes []No []Unknown
Has it ever been pumped? []Yes []No []Unknown []NA
If yes, when? _____
- *D. Are there any sewage system problems or needed repairs? []Yes []No []Unknown
- E. Does your sewage system require on-site pumping to another level? []Yes []No []Unknown
4. DWELLING INSULATION
- A. Is there insulation in the:
- (1) Ceiling? []Yes []No []Unknown
- (2) Exterior walls? []Yes []No []Unknown
- (3) Floors? []Yes []No []Unknown
- B. Are there any defective insulated doors or windows? []Yes []No []Unknown
5. DWELLING STRUCTURE
- *A. Has the roof leaked? []Yes []No []Unknown
If yes, has it been repaired? []Yes []No []Unknown []NA
- B. Are there any additions, conversions or remodeling? []Yes []No []Unknown
If yes, was a building permit required? []Yes []No []Unknown []NA
If yes, was a building permit obtained? []Yes []No []Unknown []NA
If yes, was final inspection obtained? []Yes []No []Unknown []NA

- C. Are there smoke alarms or detectors?]Yes]No]Unknown
- D. Is there a woodstove **or fireplace insert** included in the sale?]Yes]No]Unknown
***If yes, what is the make?**

***If yes, was it installed with a permit?**]Yes]No]Unknown
***If yes, is a certification label issued by the United States Environmental Protection Agency (EPA) or the Department of Environmental Quality (DEQ) affixed to it?**]Yes]No]Unknown
- *E. Has pest and dry rot, structural or “whole house” inspection been done within the last three years?]Yes]No]Unknown
- *F. Are there any moisture problems, areas of water penetration, mildew odors or other moisture conditions (especially in the basement)?]Yes]No]Unknown
***If yes, explain on attached sheet the frequency and extent of problem and any insurance claims, repairs or remediation done.**
- G. Is there a sump pump on the property?]Yes]No]Unknown
- H. Are there any materials used in the construction of the structure that are or have been the subject of a recall, class action suit, settlement or litigation?]Yes]No]Unknown
If yes, what are the materials? _____
- (1) Are there problems with the materials?]Yes]No]Unknown]NA
- (2) Are the materials covered by a warranty?]Yes]No]Unknown]NA
- (3) Have the materials been inspected?]Yes]No]Unknown]NA
- (4) Have there ever been claims filed for these materials by you or by previous owners?]Yes]No]Unknown]NA
If yes, when? _____
- (5) Was money received?]Yes]No]Unknown]NA
- (6) Were any of the materials repaired or replaced?]Yes]No]Unknown]NA
6. DWELLING SYSTEMS AND FIXTURES
 If the following systems or fixtures are included in the purchase price, are they in good working order on the date this form is signed?
- A. Electrical system, including wiring, switches, outlets and service]Yes]No]Unknown
- B. Plumbing system, including pipes, faucets, fixtures and toilets]Yes]No]Unknown
- C. Water heater tank]Yes]No]Unknown
- D. Garbage disposal]Yes]No]Unknown]NA
- E. Built-in range and oven]Yes]No]Unknown]NA
- F. Built-in dishwasher]Yes]No]Unknown]NA
- G. Sump pump]Yes]No]Unknown]NA
- H. Heating and cooling systems]Yes]No]Unknown]NA
- I. Security system]Owned]Leased]Yes]No]Unknown]NA
- J. Are there any materials or products used in

- the systems and fixtures that are or have been the subject of a recall, class action settlement or other litigations?]Yes]No]Unknown
 If yes, what product? _____
- (1) Are there problems with the product?]Yes]No]Unknown
 (2) Is the product covered by a warranty?]Yes]No]Unknown
 (3) Has the product been inspected?]Yes]No]Unknown
 (4) Have claims been filed for this product by you or by previous owners?]Yes]No]Unknown
 If yes, when? _____
 (5) Was money received?]Yes]No]Unknown
 (6) Were any of the materials or products repaired or replaced?]Yes]No]Unknown
7. COMMON INTEREST
- A. Is there a Home Owners' Association or other governing entity?]Yes]No]Unknown
 Name of Association or Other Governing Entity _____
 Contact Person _____
 Address _____
 Phone Number _____
- B. Regular periodic assessments: \$_____ per]Month]Year]Other _____
- *C. Are there any pending or proposed special assessments?]Yes]No]Unknown
- D. Are there shared "common areas" or joint maintenance agreements for facilities like walls, fences, pools, tennis courts, walkways or other areas co-owned in undivided interest with others?]Yes]No]Unknown
- E. Is the Home Owners' Association or other governing entity a party to pending litigation or subject to an unsatisfied judgment?]Yes]No]Unknown]NA
- F. Is the property in violation of recorded covenants, conditions and restrictions or in violation of other bylaws or governing rules, whether recorded or not?]Yes]No]Unknown]NA
8. GENERAL
- A. Are there problems with settling, soil, standing water or drainage on the property or in the immediate area?]Yes]No]Unknown
- B. Does the property contain fill?]Yes]No]Unknown
- C. Is there any material damage to the property or any of the structure(s) from fire, wind, floods, beach movements, earthquake, expansive soils or landslides?]Yes]No]Unknown
- D. Is the property in a designated floodplain?]Yes]No]Unknown
- E. Is the property in a designated slide or other geologic hazard zone?]Yes]No]Unknown
- *F. Has any portion of the property been tested

- or treated for asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks or contaminated soil or water?]Yes]No]Unknown
- G. Are there any tanks or underground storage tanks (e.g., septic, chemical, fuel, etc.) on the property?]Yes]No]Unknown
- H. Has the property ever been used as an illegal drug manufacturing or distribution site?]Yes]No]Unknown
 *If yes, was a Certificate of Fitness issued?]Yes]No]Unknown
- *I. Has the property been classified as forestland-urban interface?]Yes]No]Unknown

9. FULL DISCLOSURE BY SELLERS

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

*If yes, describe the defect on attached sheet and explain the frequency and extent of the problem and any insurance claims, repairs or remediation.

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy of this disclosure statement. I/we authorize my/our agents to deliver a copy of this disclosure statement to all prospective buyers of the property or their agents.

Seller(s) signature:

SELLER _____ DATE _____

SELLER _____ DATE _____

II. BUYER'S ACKNOWLEDGMENT

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

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

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

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

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

BUYER _____ DATE _____

BUYER _____ DATE _____

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

_____ Real Estate Licensee

_____ Real Estate Firm

Date received by agent _____

SECTION 19. ORS 468A.485, 468A.490, 468A.495, 468A.500, 468A.505 and 468A.515 are added to and made a part of ORS 468A.460 to 468A.480.

SECTION 20. ORS 468A.470, 468A.475, 468A.480, 468A.510 and 468A.520 are repealed.

Passed by Senate April 14, 2009

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Secretary of Senate

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President of Senate

Passed by House June 1, 2009

.....
Speaker of House

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

.....
Secretary of State