

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)

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**.

Extends air quality provisions relating to emissions from woodstoves to solid fuel burning devices. Modifies provisions relating to sale of solid fuel burning devices. Defines "solid fuel burning device." Prohibits burning of certain materials in solid fuel burning devices, masonry fireplaces or trash burners.

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 devices. Modifies prohibition on sale of used solid fuel burning devices. Modifies provisions relating to removal of solid fuel burning devices. Modifies requirements for solid fuel heating curtailment program.

Adds questions regarding woodstoves and fireplace inserts to seller's property disclosure statement.

A BILL FOR AN ACT

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

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

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

7 468A.460. In the interest of the public health and welfare it is [*declared to be the public*] **the**
8 policy of the State **of Oregon** to control, reduce and prevent air pollution caused by [*woodstove*
9 *emissions*] **solid fuel burning devices**. The Legislative Assembly declares [*it to be the public*] **that**
10 **it is also the** policy of the State **of Oregon** to reduce [*woodstove*] **solid fuel burning device** emis-
11 sions by encouraging the Department of Environmental Quality to continue efforts to educate the
12 public about the **air quality** effects of [*woodstove*] **those** emissions and [*the desirability of achieving*
13 *better woodstove*] **by ensuring that solid fuel burning devices used in Oregon meet** emission
14 performance [*and heating efficiency*] **standards established under ORS 468A.465.**

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

16 468A.465. (1) [*On and after July 1, 1986,*] A person may not advertise to sell, offer to sell or sell
17 a new [*woodstove*] **solid fuel burning device** in Oregon unless[:], **pursuant to rules adopted by**
18 **the Environmental Quality Commission, the Department of Environmental Quality certifies**
19 **that the device meets emission performance standards, certification labeling standards and**
20 **all other requirements set forth in rules adopted by the commission.**

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

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

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

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

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

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

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

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

13 468A.485. As used in ORS [468A.490] **468A.460 to 468A.480:**

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

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

20 **(1) “Masonry heater” means a site-built or site-assembled heating device that:**

21 **(a) Uses solid fuels;**

22 **(b) Has an interior construction consisting of a firebox and heat exchange channels built**
 23 **from refractory components; and**

24 **(c) Is constructed mainly of masonry materials in which the heat from intermittent fires**
 25 **burned rapidly in its firebox is stored in its structure for slow release to a building.**

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

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

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

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

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

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

39 **(C) Pellet stoves that meet minimum emission performance standards adopted by the**
 40 **Environmental Quality Commission, or all pellet stoves if the commission does not adopt any**
 41 **standards;**

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

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

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

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

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

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

7 **SECTION 6.** A person may not cause or allow any of the following materials to be burned
8 in a solid fuel burning device, masonry fireplace, trash burner or other solid fuel burning
9 device identified in rules adopted by the Environmental Quality Commission:

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

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

22 468A.490. (1) There is [*created*] **established** within the State Treasury a fund known as the
23 Residential [*Wood*] **Solid Fuel** Heating Air Quality Improvement Fund, separate and distinct from
24 the General Fund.

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

27 (3) The State Treasurer may invest and reinvest the moneys in the fund as provided in ORS
28 293.701 to 293.820. Interest from the moneys deposited in the fund and earnings from investment of
29 the moneys in the fund shall accrue to the fund.

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

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

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

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

45 [*(d) Not more than 15 percent of the total amount of moneys received under this section shall be*

1 *expended for costs under paragraphs (a) and (b) of this subsection.]*

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

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

12 **(b) Fund the program established under subsection (5) of this section.**

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

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

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

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

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

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

32 *[(6) A portion of the moneys available under subsection (4) of this section shall be used by the*
 33 *commission to fund local government or regional authority programs to provide subsidies for replace-*
 34 *ment of woodstoves that were not certified under ORS 468A.480 for sale as new on or after July 1,*
 35 *1986, to low income persons in wood heated households in an area that exceeds the PM10 standard.*
 36 *The local government or regional authority programs must include the following elements to be eligible*
 37 *for funding:]*

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

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

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

1 *under the Clean Air Act to reach attainment of such standards.]*

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

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

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

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

13 468A.495. *[On and after September 29, 1991,]* The state building code under ORS 455.010 shall
14 prohibit installations of used *[woodstoves that were not certified for sale as new on or after July 1,*
15 *1986, under ORS 468A.480 (1).]* **solid fuel burning devices, except devices that:**

16 **(1) Were certified:**

17 **(a) By the United States Environmental Protection Agency pursuant to 40 C.F.R. part**
18 **60, subpart AAA; or**

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

20 **(2) Are not otherwise prohibited by the Environmental Quality Commission by rule.**

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

22 468A.500. *[On and after September 29, 1991, no]* A person *[shall]* **may not** advertise for sale, offer
23 to sell or sell, within this state, a used *[woodstove that was not certified under ORS 468A.480 (1) for*
24 *sale as new on or after July 1, 1986.]* **solid fuel burning device, unless the device:**

25 **(1) Was certified:**

26 **(a) By the United States Environmental Protection Agency pursuant to 40 C.F.R. part**
27 **60, subpart AAA; or**

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

29 **(2) Is not otherwise prohibited by the Environmental Quality Commission by rule.**

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

31 468A.505. *[After December 31, 1994, all woodstoves, other than cookstoves, not certified for sale*
32 *as new on or after July 1, 1986, under ORS 468A.480 (1) shall be removed and destroyed upon sale*
33 *of a home in any PM10 nonattainment area in the state that does not attain compliance with the PM10*
34 *standard established by the Environmental Quality Commission under ORS 468A.025 by December 31,*
35 *1994.]*

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

39 **(a) Were certified:**

40 **(A) By the United States Environmental Protection Agency pursuant to 40 C.F.R. part**
41 **60, subpart AAA; or**

42 **(B) By the Department of Environmental Quality pursuant to ORS 468A.465; and**

43 **(b) Are not otherwise required to be removed and destroyed by the Environmental**
44 **Quality Commission by rule.**

45 **(2) This section does not apply to:**

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

3 (b) Central, wood-fired furnaces that are indoors, ducted and thermostatically controlled
4 and that have a dedicated cold air inlet and a dedicated hot air outlet that connect to the
5 heating ductwork for the entire residential structure.

6 (3) To claim the exemption provided in subsection (2) of this section, the person respon-
7 sible for removal and destruction of a solid fuel burning device under this section shall pro-
8 vide to the department written verification that the exemption applies, pursuant to rules
9 adopted by the commission.

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

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

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

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

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

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

26 468A.515. (1) If a local government or regional authority has not adopted or is not ade-
27 quately implementing a curtailment program in any area of the state where such a program
28 is required under the Clean Air Act, the Environmental Quality Commission may adopt by
29 rule, and the Department of Environmental Quality may operate and enforce, a program to
30 curtail residential solid fuel heating during periods of air stagnation as described in sub-
31 section (2) of this section. The department shall suspend operation and enforcement of a
32 program adopted under this subsection upon a determination by the department that the
33 local government or regional authority has adopted and is adequately implementing the re-
34 quired curtailment program.

35 [(1)] (2) Any programs adopted by the [Environmental Quality] commission pursuant to sub-
36 section (1) of this section to curtail residential [wood] solid fuel heating during periods of air
37 stagnation shall provide for two stages of curtailment based on the severity of projected air quality
38 conditions. Except as provided in subsection [(2)] (3) of this section, the programs shall apply to all
39 [woodburning fireplaces, woodstoves and appliances] heating by means of solid fuel, including but
40 not limited to solid fuel burning devices, masonry fireplaces and other solid fuel burning de-
41 vices identified in rules adopted by the commission. The programs shall provide that [woodstoves
42 that were certified for sale as new on or after July 1, 1986, under ORS 468A.480 (1) shall be curtailed
43 only at the second stage to insure attainment of air quality standards.] use of a solid fuel burning
44 device, masonry fireplace or other solid fuel burning device identified in rules adopted by the
45 commission be curtailed only at the more severe stage of curtailment if the solid fuel burn-

1 **ing device, masonry fireplace or other solid fuel burning device identified in rules adopted**
 2 **by the commission:**

3 **(a) Was certified:**

4 **(A) By the United States Environmental Protection Agency pursuant to 40 C.F.R. part**
 5 **60, subpart AAA; or**

6 **(B) Was certified by the department pursuant to ORS 468A.465; and**

7 **(b) Is not otherwise required to be curtailed during the less severe stage of curtailment.**

8 [(2)] (3) Programs adopted by the commission to curtail residential [*wood*] **solid fuel** heating
 9 **during periods of air stagnation** [*shall*] **do not apply to:**

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

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

18 (c) [*Wood burning*] Pellet stoves, **unless the pellet stove is located in an area designated as**
 19 **a nonattainment area for particulates by rule of the commission adopted under ORS**
 20 **468A.025.**

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

29 [(4) *Except as provided in this section, after September 29, 1991, the commission shall not adopt*
 30 *or make more stringent any additional regulatory programs affecting residential wood heating unless*
 31 *the air quality standard for PM10 established by the commission under ORS 468A.025 has not been*
 32 *attained in the state by the latest date, considering extensions, allowed under the Clean Air Act.*
 33 *Nothing in this section shall be construed to affect regulatory programs in effect on September 29,*
 34 *1991.]*

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

36 468A.005. As used in ORS chapters 468, 468A and 468B, unless the context requires otherwise:

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

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

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

43 (4) "Air contamination source" means any source at, from, or by reason of which there is emit-
 44 ted into the atmosphere any air contaminant, regardless of who the person may be who owns or
 45 operates the building, premises or other property in, at or on which such source is located, or the

1 facility, equipment or other property by which the emission is caused or from which the emission
2 comes.

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

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

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

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

15 468A.020. (1) Except as provided in subsection (2) of this section, the air quality laws contained
16 in ORS chapters 468, 468A and 468B do not apply to:

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

18 (A) Growing or harvesting crops;

19 (B) Raising fowl or animals;

20 (C) Clearing or grading agricultural land;

21 (D) Propagating and raising nursery stock;

22 (E) Propane flaming of mint stubble; and

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

25 (b) Equipment used in agricultural operations, except boilers used in connection with propagat-
26 ing and raising nursery stock.

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

28 (d) Heating equipment in or used in connection with residences used exclusively as dwellings for
29 not more than four families, except [*woodstoves which shall be*] **solid fuel burning devices, as de-**
30 **defined in ORS 468A.485, that are** subject to regulation under this section[,] **and ORS 468A.140 and**
31 **468A.460 to 468A.480[, 468A.490 and 468A.515].**

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

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

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

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

40 (b) Necessary to implement the federal Clean Air Act (P.L. 88-206 as amended) under ORS
41 468A.025, 468A.030, 468A.035, 468A.040, 468A.045 and 468A.300 to 468A.330; or

42 (c) Necessary for the Environmental Quality Commission, in the commission's discretion, to im-
43 plement a recommendation of the Task Force on Dairy Air Quality created under section 3, chapter
44 799, Oregon Laws 2007, for the regulation of dairy air contaminant emissions.

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

1 468A.300. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330, 468A.415, 468A.420 and
2 [468A.485 to 468A.515] **468A.460 to 468A.480:**

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

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

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

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

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

10 **SECTION 16. Section 17 of this 2009 Act is added to and made a part of ORS 105.462 to**
11 **105.490.**

12 **SECTION 17. ORS 105.464 preempts any law, rule, regulation, code or ordinance of the**
13 **political subdivisions of this state including, but not limited to, the Lane Regional Air Pro-**
14 **tection Agency regarding the disclosure of solid fuel burning devices, as defined in ORS**
15 **468A.485, in connection with a written offer to purchase real property in this state for which**
16 **a seller's property disclosure statement is required under ORS 105.465 and 105.470.**

17 **SECTION 18. ORS 105.464 is amended to read:**

18 105.464. A seller's property disclosure statement must be in substantially the following form:
19
20

21
22 If required under ORS 105.465, a seller shall deliver in substantially the following form the
23 seller's property disclosure statement to each buyer who makes a written offer to purchase
24 real property in this state:
25

26
27 **INSTRUCTIONS TO THE SELLER**
28

29 Please complete the following form. Do not leave any spaces blank. Please refer to the line
30 number(s) of the question(s) when you provide your explanation(s). If you are not claiming an ex-
31 clusion or refusing to provide the form under ORS 105.475 (4), you should date and sign each page
32 of this disclosure statement and each attachment.
33

34 Each seller of residential property described in ORS 105.465 must deliver this form to each buyer
35 who makes a written offer to purchase. Under ORS 105.475 (4), refusal to provide this form gives the
36 buyer the right to revoke their offer at any time prior to closing the transaction. Use only the
37 section(s) of the form that apply to the transaction for which the form is used. If you are claiming
38 an exclusion under ORS 105.470, fill out only Section 1.
39

40 An exclusion may be claimed only if the seller qualifies for the exclusion under the law. If not ex-
41 cluded, the seller must disclose the condition of the property or the buyer may revoke their offer
42 to purchase anytime prior to closing the transaction. Questions regarding the legal consequences
43 of the seller's choice should be directed to a qualified attorney.
44

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

3
4 Section 1. EXCLUSION FROM ORS 105.462 TO 105.490:

5
6 You may claim an exclusion under ORS 105.470 only if you qualify under the statute. If you are not
7 claiming an exclusion, you must fill out Section 2 of this form completely.

8
9 Initial only the exclusion you wish to claim.

10
11 _____ This is the first sale of a dwelling never occupied. The dwelling is constructed or installed
12 under building or installation permit(s) #_____, issued by _____.

13
14 _____ This sale is by a financial institution that acquired the property as custodian, agent or
15 trustee, or by foreclosure or deed in lieu of foreclosure.

16
17 _____ The seller is a court appointed receiver, personal representative, trustee, conservator or
18 guardian.

19
20 _____ This sale or transfer is by a governmental agency.

21
22 _____
23 Signature(s) of Seller claiming exclusion
24 Date _____

25
26 _____
27 Buyer(s) to acknowledge Seller's claim
28 Date _____

29 _____
30
31
32 (IF YOU DID NOT CLAIM AN EXCLUSION IN SECTION 1, YOU MUST FILL OUT THIS SEC-
33 TION.)

34
35 Section 2. SELLER'S PROPERTY DISCLOSURE STATEMENT

36
37 (NOT A WARRANTY)
38 (ORS 105.464)

39
40 NOTICE TO THE BUYER: THE FOLLOWING REPRESENTATIONS ARE MADE BY THE
41 SELLER(S) CONCERNING THE CONDITION OF THE PROPERTY LOCATED
42 AT _____ ("THE PROPERTY").

43
44 DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS
45 OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE.

1 BUYER HAS FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE
2 STATEMENT TO REVOKE BUYER'S OFFER BY DELIVERING BUYER'S SEPARATE SIGNED
3 WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S
4 DISCLOSURE STATEMENT, UNLESS BUYER WAIVES THIS RIGHT AT OR PRIOR TO ENTER-
5 ING INTO A SALE AGREEMENT.

6
7 FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS
8 PROPERTY, BUYER IS ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED
9 SPECIALIST TO INSPECT THE PROPERTY ON BUYER'S BEHALF INCLUDING, FOR EXAM-
10 PLE, ONE OR MORE OF THE FOLLOWING: ARCHITECTS, ENGINEERS, PLUMBERS,
11 ELECTRICIANS, ROOFERS, ENVIRONMENTAL INSPECTORS, BUILDING INSPECTORS, CER-
12 TIFIED HOME INSPECTORS, OR PEST AND DRY ROT INSPECTORS.

13
14 Seller _____ is/ _____ is not occupying the property.

15
16 I. SELLER'S REPRESENTATIONS:

17
18 The following are representations made by the seller and are not the representations of any finan-
19 cial institution that may have made or may make a loan pertaining to the property, or that may
20 have or take a security interest in the property, or any real estate licensee engaged by the seller
21 or the buyer.

22
23 *If you mark yes on items with *, attach a copy or explain on an attached sheet.

24
25 1. TITLE

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

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

29 (1) First right of refusal

30 (2) Option

31 (3) Lease or rental agreement

32 (4) Other listing

33 (5) Life estate?

34 *C. Is the property being transferred an
35 unlawfully established unit of land? []Yes []No []Unknown

36 *D. Are there any encroachments, boundary
37 agreements, boundary disputes or recent
38 boundary changes? []Yes []No []Unknown

39 *E. Are there any rights of way, easements,
40 licenses, access limitations or claims that
41 may affect your interest in the property? []Yes []No []Unknown

42 *F. Are there any agreements for joint
43 maintenance of an easement or right of way? []Yes []No []Unknown

44 *G. Are there any governmental studies, designations,
45 zoning overlays, surveys or notices that would

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

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

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

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

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

21

22 9. FULL DISCLOSURE BY SELLERS

- 23 *A. Are there any other material defects
- 24 affecting this property or its value
- 25 that a prospective buyer should
- 26 know about?]Yes]No
- 27 *If yes, describe the defect on attached sheet
- 28 and explain the frequency and extent of the
- 29 problem and any insurance claims, repairs or
- 30 remediation.

31 B. Verification:

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

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

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

35 prospective buyers of the property or their agents.

36

37 Seller(s) signature:

38

39 SELLER _____ DATE _____

40

41 SELLER _____ DATE _____

42

43

44

45 II. BUYER'S ACKNOWLEDGMENT

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

3
4 B. Each buyer acknowledges and understands that the disclosures set forth in this statement and in
5 any amendments to this statement are made only by the seller and are not the representations of
6 any financial institution that may have made or may make a loan pertaining to the property, or that
7 may have or take a security interest in the property, or of any real estate licensee engaged by the
8 seller or buyer. A financial institution or real estate licensee is not bound by and has no liability
9 with respect to any representation, misrepresentation, omission, error or inaccuracy contained in
10 another party's disclosure statement required by this section or any amendment to the disclosure
11 statement.

12
13 C. Buyer (which term includes all persons signing the "buyer's acknowledgment" portion of this
14 disclosure statement below) hereby acknowledges receipt of a copy of this disclosure statement (in-
15 cluding attachments, if any) bearing seller's signature(s).

16
17 DISCLOSURES, IF ANY, CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON
18 THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DIS-
19 CLOSURE. IF THE SELLER HAS FILLED OUT SECTION 2 OF THIS FORM, YOU, THE BUYER,
20 HAVE FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS DISCLOSURE STATEMENT TO
21 REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT
22 OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S DISCLOSURE UNLESS
23 YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

24
25 BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS SELLER'S PROPERTY
26 DISCLOSURE STATEMENT.

27
28 BUYER _____ DATE _____

29
30 BUYER _____ DATE _____

31
32 Agent receiving disclosure statement on buyer's behalf to sign and date:

33
34 _____ Real Estate Licensee

35
36 _____ Real Estate Firm

37
38 Date received by agent _____

39
40
41 **SECTION 19. ORS 468A.485, 468A.490, 468A.495, 468A.500, 468A.505 and 468A.515 are added**
42 **to and made a part of ORS 468A.460 to 468A.480.**

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