

Enrolled
House Bill 2078

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Oregon State Police)

CHAPTER

AN ACT

Relating to fire safety; creating new provisions; amending ORS 476.040, 476.720, 479.168, 479.180, 479.195, 479.200, 479.295 and 479.990; and repealing ORS 479.018, 479.020, 479.030, 479.040, 479.050, 479.060, 479.080, 479.090, 479.100, 479.130, 479.140, 479.150 and 479.160.

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

SECTION 1. ORS 476.040 is amended to read:

476.040. The State Fire Marshal shall appoint a chief deputy state fire marshal and deputy state fire marshals whose duties shall be to assist in carrying into effect the provisions of ORS 476.010 to 476.090 and 476.155 to 476.170, 476.210 to 476.270[, 479.140] and 479.168 to 479.190. The State Fire Marshal may also employ such other assistants and employees and incur such other expenses as the State Fire Marshal may deem necessary in carrying into effect these provisions. The State Fire Marshal may remove any deputies or assistants for cause.

SECTION 2. ORS 476.720 is amended to read:

476.720. ORS 476.010 to 476.090, 476.155 to 476.170, 476.210 to 476.270, 476.990 (1)[, 479.140] and 479.168 to 479.190 are remedial in nature and shall be construed liberally.

SECTION 3. ORS 479.180 is amended to read:

479.180. (1) If the owner, lessee, agent or occupant is aggrieved by the order of an officer under the provisions of ORS 476.030, [479.020 to 479.130,] 479.170, 479.210 to 479.220, 480.122 to 480.160, 480.330, 480.340, 480.420 to 480.434 or 480.450 and desires a hearing, the person may complain or appeal in writing to the State Fire Marshal within 10 days from the service of the order. The complaint or appeal shall set forth the specific grounds of the complaint or appeal and no other ground shall be considered thereafter. The complaint or appeal shall be accompanied by a fee of \$40 payable to the State Fire Marshal, and the State Fire Marshal may refer the complaint or appeal to the regional appeal advisory board established for that region by notifying the chairperson of that board and sending a copy of the notice to the complainant or appellant. The board shall fix a time for hearing and notify the complainant or appellant of the time and place thereof, which shall be within 10 days after such referral by the State Fire Marshal. If the State Fire Marshal does not refer the matter to a regional appeal advisory board, the State Fire Marshal shall fix a time and place, not less than five and not more than 10 days thereafter, when and where the complaint or appeal will be heard by the State Fire Marshal. Within 10 days after receiving a recommendation from the regional appeal advisory board, or if no referral was made to such board, within 10 days after the hearing before the State Fire Marshal, the State Fire Marshal may affirm, modify, revoke or vacate the order complained of or appealed from. Unless the order is modified, revoked or vacated by the State Fire Marshal, it shall remain in force and be complied with by the owner, lessee, agent or

occupant, and within the time fixed in the order or fixed by the State Fire Marshal. If the State Fire Marshal vacates or revokes the order complained of or appealed from, or modified it in any particular other than extending time for compliance, the fee paid with the complaint or appeal shall be refunded. Otherwise, it shall be credited to appropriate state funds, and the State Fire Marshal shall so notify the State Treasurer.

(2) If the complainant or appellant under subsection (1) of this section is aggrieved by the final order of the State Fire Marshal, and if such order necessitates the expenditure of money or involves statutory interpretation, the complainant or appellant may, within 10 days thereafter, appeal to the circuit court of the county in which the property is situated, notifying the State Fire Marshal of the appeal within 10 days thereafter, which notice shall be in writing and delivered personally or by registered letter to the marshal, or left at the principal office of the State Fire Marshal at the state capital. The party so appealing shall, within two days after filing the appeal, file with the circuit court in which appeal is made a bond in an amount to be fixed by the court or judge, but in no case less than \$100, with two sufficient sureties possessing the qualification of bail on arrest, the bond to be approved by the court and conditioned to pay all the costs on the appeal in case the appellant fails to sustain it or it is dismissed for any cause. In the case of an appeal involving an order under ORS 479.170, the circuit court shall hear and determine the appeal within 10 days after the date of filing the same.

(3) The State Fire Marshal shall make or have made a certified summary of the proceedings at the hearing before the regional appeal advisory board or before the State Fire Marshal, and together with all the evidentiary matter filed in the office of the State Fire Marshal or presented to the regional appeal advisory board, transmit them to the circuit court at least three days prior to the date fixed by the court for hearing when it shall be tried de novo.

SECTION 4. ORS 479.195 is amended to read:

479.195. [(1) All dance halls, clubs, amusement halls, auditoriums and every place of public assembly not having fixed seats and having a capacity of more than 100 persons shall post and keep posted a notice of the maximum number of persons allowed at any one time as established by regulations of the State Fire Marshal or by the approved authority when such public assemblies are located within the jurisdiction of a governmental subdivision granted the exemption provided by ORS 476.030 (3). All such capacity notices shall be on a form approved or provided by the State Fire Marshal and shall be securely fixed and posted in a conspicuous place so as to be readily visible to the occupants of such place of assembly.]

(1) As used in this section, “assembly occupancy” means the use of a building or structure, or a portion of a building or structure, in a manner that is classified as an Assembly Group A occupancy under the structural specialty code described in ORS chapter 455.

(2) If the State Fire Marshal, or deputies, assistants as defined in ORS 476.060, or the approved authority, as provided by ORS 476.030 (3), upon examination or inspection finds [a building or other structure described in subsection (1) of this section, to be occupied by a] **that the number of persons present under an assembly occupancy is** in excess of the maximum number of persons allowed at any one time as set forth in [the] a capacity notice, the State Fire Marshal, or deputies, assistants as defined in ORS 476.060, or the approved authority, as provided in ORS 476.030 (3), may [close the building or other structure for use or] **prohibit the assembly occupancy** until compliance has been made.

(3) The owner of any building or [other] structure [closed] **for which an assembly occupancy is prohibited** under subsection (2) of this section shall have immediate access to the circuit court for the county in which the building or [other] structure is located for review of the order [of exclusion or removal] **prohibiting the occupancy assembly**. Such access may be in the form of any appropriate judicial proceeding and shall be given priority over all other cases on the docket of the circuit court.

(4) The [closure] **prohibition** provided for in subsection (2) of this section [shall] **does** not exclude any other remedies available to the State Fire Marshal, deputies, or approved authority, as provided by ORS 476.030 (3).

SECTION 5. ORS 479.200 is amended to read:

479.200. [(1)] Any public building, as defined in ORS 479.168, erected after July 1, 1967, [that exceeds 5,000 square feet in usable or occupied floor area or is more than two stories in height and exceeds 2,000 square feet in usable or occupied ground floor area] must have a readily available **fire protection** water supply. **The State Fire Marshal shall adopt rules for determining the fire protection water supply for a public building.** [within 500 feet of such building of sufficient capacity to allow fire-fighting apparatus to pump 500 gallons per minute for a period of 10 minutes for each 5,000 square feet of occupied or usable floor area or fraction thereof, up to 500 gallons per minute for 30 minutes.]

[(2)] Required water supplies may be provided by underground cisterns or surface ponds, lakes or streams when approved and readily accessible standpipes of not less than four inches inside diameter with not less than two two-and-one-half-inch outlets or equivalent are provided.]

SECTION 6. ORS 479.990 is amended to read:

479.990. [(1)] Violation of any provision of ORS 479.020 to 479.130 or 479.160 or rules adopted thereunder, or failure, neglect or refusal to comply with any requirements in these sections, is punishable by a civil penalty of not more than \$50. Each day's violation of or failure to comply with these provisions shall be deemed a separate violation.]

[(2)] Violation of any provision of ORS 479.130 or rules adopted thereunder is punishable by a civil penalty of not more than \$50. Each day's violation shall be deemed a separate violation.]

[(3)] Violation of ORS 479.150 or rules adopted thereunder is punishable by a civil penalty of not less than \$10 nor more than \$100. Each day of failure to comply with the provisions of ORS 479.150 or rules adopted thereunder shall be deemed a separate violation.]

[(4)] (1) Any owner or occupant of any building or premises who fails to comply with any order provided for in ORS 479.170 and not appealed from, or with any such order of the State Fire Marshal upon appeal to the State Fire Marshal, shall be punished by a civil penalty of not more than \$500 for each violation. All penalties, fees or forfeitures collected under the provisions of this subsection shall be paid into the State Treasury.

[(5)] (2) Violation of ORS 479.255, 479.260, 479.270, 479.280, 479.297 or 479.300, or rules adopted [thereunder] **under ORS 479.255, 479.260, 479.270, 479.280, 479.297 or 479.300**, is punishable by a civil penalty imposed by the State Fire Marshal in an amount not to exceed \$250.

[(6)] (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

SECTION 7. ORS 479.168 is amended to read:

479.168. As used in ORS 479.168 to 479.190 and 479.990 [(4)]:

(1) "Alter" in its various modes and tenses and its participial forms refers to an alteration.

(2) "Alterations," as applied to a building or structure, means any change, addition or modification in construction or occupancy.

(3) "Construction" means the making, building, alteration, erection, reconstruction, rebuilding or production of a building or addition or extension thereto, or enlargement thereof, in any manner not included in the term "repair."

(4) "Family" means an individual or two or more persons related by blood or marriage or a group of not more than five persons, excluding servants, who need not be related by blood or marriage, living together in a dwelling unit.

(5) "Hospital" means a building of any sort in which sick or injured persons are received or kept for medical, surgical or nursing purposes.

(6) "Occupancy" means the purpose for which a building or structure is used or intended to be used. Change of occupancy is not intended to include change of tenants or proprietors.

(7) "Owner" includes a duly authorized agent or attorney, a purchaser, a devisee, a fiduciary and a person having a vested or contingent interest in the property in question.

(8) "Private residence" means that part of a single, double or multiple dwelling house or building occupied as living or sleeping quarters by one or more family units, exclusive of any portion of such house or building devoted to commercial, processing or manufacturing use.

(9) "Public building" means a building in which persons congregate for civic, political, educational, religious, social or recreational purposes, including among others, state buildings, court-houses, schools, colleges, libraries, museums, exhibit buildings, lecture halls, churches, assembly halls, lodge rooms, dance halls, theaters, skating rinks, bath houses, armories, recreation piers, grandstands and bleachers in exhibition parks or fields, and jails.

(10) "Repair" means restoration of an existing thing to its former state, to refit, to mend, to make good. "Repair" does not include construction, reconstruction, alteration or rebuilding of a building or any part thereof.

SECTION 8. ORS 479.295 is amended to read:

479.295. Notwithstanding the provisions of ORS 476.030, the State Fire Marshal shall adopt, by rule:

(1) Standards for the installation and maintenance of smoke alarms and smoke detectors as the State Fire Marshal considers necessary to carry out the purposes of ORS 479.250 to 479.305; and

(2) Standards for the implementation of ORS 479.250 to 479.305 and 479.990 [(5)] (2).

SECTION 9. ORS 479.018, 479.020, 479.030, 479.040, 479.050, 479.060, 479.080, 479.090, 479.100, 479.130, 479.140, 479.150 and 479.160 are repealed.

SECTION 10. The amendments to ORS 479.195 by section 4 of this 2011 Act do not terminate or otherwise affect the validity of any order of removal or exclusion issued under ORS 479.195 prior to the effective date of this 2011 Act.

SECTION 11. (1) The State Fire Marshal shall adopt rules under ORS 479.200 in time for the rules to take effect on or before January 1, 2013.

(2) Notwithstanding the amendments to ORS 479.200 by section 5 of this 2011 Act, the water supply availability requirements of ORS 479.200 as set forth in the 2009 Edition of Oregon Revised Statutes shall continue in effect until the earlier of:

(a) The effective date of rules adopted by the State Fire Marshal under ORS 479.200; or

(b) January 2, 2013.

Passed by House February 21, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 9, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State