

Enrolled Senate Bill 29

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CHAPTER

AN ACT

Relating to fireworks law definitions; creating new provisions; amending ORS 164.055, 166.660, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.160 and 480.200; and repealing ORS 480.110.

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

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 480.110 to 480.165.

SECTION 2. As used in ORS 480.110 to 480.165:

(1) "Cone fountain" means a cardboard or heavy paper cone that:

(a) Contains 50 grams or less of pyrotechnic composition;

(b) If mounted on a common base with other cones having less than one-half inch of separation, results, when measured in combination with all other cones on the base, in a total pyrotechnic composition of not more than 200 grams;

(c) If mounted on a common base with other cones having at least one-half inch of separation, results, when measured in combination with all other cones on the base, in a total pyrotechnic composition of not more than 500 grams; and

(d) Upon ignition has the same effect as a cylindrical fountain.

(2) "Consumer fireworks" means:

(a) A cone fountain, a cylindrical fountain, a flitter sparkler, a ground spinner, an illuminating torch or a wheel, or a combination of two or more of those items; and

(b) Any other items, other than exempt fireworks, containing 500 grams or less of pyrotechnic composition that the State Fire Marshal recognizes by rule to be suitable for retail sale to members of the general public for individual use.

(3) "Cylindrical fountain" means a cylindrical tube that:

(a) Contains 75 grams or less of pyrotechnic composition;

(b) If mounted on a common base with other tubes having less than one-half inch of separation, results, when measured in combination with all other tubes on the base, in a total pyrotechnic composition of not more than 200 grams;

(c) If mounted on a common base with other tubes having at least one-half inch of separation, results, when measured in combination with all other tubes on the base, in a total pyrotechnic composition of not more than 500 grams;

(d) Upon ignition produces a shower of colored sparks and may produce a whistling effect; and

(e) Is provided with a means for restraining the behavior of the item, such as a spike for insertion into the ground, a wood or plastic base for placing on the ground or, if designed to be handheld, a wood or cardboard handle.

(4) "Display fireworks" means pyrotechnic devices that:

(a) Are designed for travel into the air or to project effects from a fixed position; and

(b)(A) Are classified by the United States Department of Transportation as Division 1.3 compatibility group G explosives or Division 1.4 compatibility group G explosives; or

(B) Contain more than 500 grams of pyrotechnic composition and are classified by the United States Department of Transportation as Division 1.4 compatibility group E or S explosives.

(5) "Exempt fireworks" means the following:

(a) Paper caps containing 0.25 grains or less of explosive mixture and toy guns, canes or other devices designed for firing those caps.

(b) Snakes or similar smoke-producing items containing 100 grains or less of combustible substances.

(c) Model rockets and model rocket motors that are used to propel recoverable models of rocket.

(d) Novelties and trick noisemakers.

(e) Emergency signaling devices, if used in railroad, boat, motor vehicle or other means of transportation for warning or illumination purposes.

(f) Blank cartridges of a type used:

(A) For theater or other shows;

(B) For signaling or ceremonial purposes in athletics or sports; or

(C) By the militia, an organization of war veterans or other organizations, if parading an armed color guard.

(g) Cartridges, shells or gunpowder for use in legally permitted types of firearms.

(h) Military pyrotechnic and signaling devices classified by the United States Department of Transportation as Division 1.4 compatibility group S explosives that are assigned to and in the possession of the Armed Forces of the United States, or an authorized agent of the armed forces, as inventory for use by the armed forces or agent in training active members of the armed forces in their duties.

(i) Other items that in the judgment of the State Fire Marshal do not require regulation or restrictions on sale.

(6) "Explosive mixture" means a substance arranged in a manner to allow burning in less than one second.

(7)(a) "Fireworks" means:

(A) Consumer fireworks;

(B) Display fireworks;

(C) Exempt fireworks;

(D) Pyrotechnic articles;

(E) Special effects; and

(F) Other pyrotechnic devices that:

(i) Are capable of producing audible, visual, mechanical or thermal effects through combustion, deflagration or detonation; and

(ii) Contain chemical elements and compounds that are capable of burning independently of atmospheric oxygen or contain flammable liquid mixtures or flammable gas mixtures.

(b) "Fireworks" does not mean a candle, flaming club, flaming baton or other device that is designed to keep the flame and thermal radiation in close proximity to the device.

(8) "Fireworks display" means an entertainment feature at which the public or a private group is allowed to view a display or discharge that uses or explodes display fireworks or pyrotechnic articles.

(9) "Flitter sparkler" means a narrow paper tube that:

- (a) Contains five grams or less of pyrotechnic composition;
 - (b) Produces colored sparks upon ignition; and
 - (c) Is activated by igniting paper located at one end of the tube.
- (10) “Ground spinner” means a small device similar to a wheel in design and effect that:
- (a) Contains 20 grams or less of pyrotechnic composition;
 - (b) Vents from an orifice located on the side of the tube or elsewhere on the device; and
 - (c) When placed on the ground and ignited, spins rapidly and produces a shower of colored sparks.
- (11) “Illuminating torch” means a cylindrical tube that:
- (a) Contains 100 grams or less of pyrotechnic composition; and
 - (b) Is provided with a means for restraining the behavior of the item, such as a spike for insertion into the ground, a wood or plastic base for placing on the ground or, if designed to be handheld, a wood or cardboard handle.
- (12) “Local government” has the meaning given that term in ORS 174.116.
- (13)(a) “Manufacture” means to make, construct, fabricate or produce fireworks.
- (b) “Manufacture” does not mean:
- (A) The assembly or fabrication of sets or mechanical pieces for fireworks displays; or
 - (B) Actions taken within the scope of a certification for conducting fireworks displays or for a pyrotechnics operator.
- (14) “Pyrotechnic articles” means devices that:
- (a) Are designed for professional use;
 - (b) Are similar to consumer fireworks in chemical composition and construction;
 - (c) Contain 500 grams or less of pyrotechnic composition;
 - (d) Are not labeled as consumer fireworks; and
 - (e) Have identification numbers UN0431 or UN0432 in the United States Department of Transportation Hazardous Materials Table set forth in 49 C.F.R. 172.101 or an amendment or replacement of that identification standard recognized by the State Fire Marshal.
- (15) “Pyrotechnic composition” means a mixture that is:
- (a) Composed of a metal powder having a high combustion temperature and an oxidant; and
 - (b) Capable of an exothermic reaction that produces light, heat, smoke, sound or gas.
- (16) “Pyrotechnic device” means consumer fireworks, display fireworks, pyrotechnic articles, special effects and bird and animal control devices, and other combinations or compositions of materials, that produce audible, visual, mechanical or thermal effects.
- (17) “Special effects” means articles containing pyrotechnic composition that, subject to authorization from the appropriate jurisdiction, are:
- (a) Manufactured, assembled, designed or discharged in connection with television, theater or motion picture productions, concerts or conference centers; or
 - (b) Used for commercial, industrial, educational, recreational or entertainment purposes.
- (18) “Wheel” means a pyrotechnic device that:
- (a) Is designed to be attached to a post or tree by means of a nail or string;
 - (b) Has one or more driver units or tubes, each containing not more than 60 grams of pyrotechnic composition;
 - (c) Contains a total of not more than 200 grams of pyrotechnic composition; and
 - (d) Upon ignition revolves and produces a shower of colored sparks and may produce a whistling effect.

SECTION 3. ORS 480.127 is amended to read:

480.127. (1) Any person who desires to sell [*cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, flitter sparklers or combination items*] **consumer fireworks** at retail to individual members of the general public for personal use shall apply in writing to the State Fire Marshal for a permit at least 15 days in advance of the proposed sale. The State Fire Marshal shall issue the permit only if the State Fire Marshal finds that the applicant is qualified to conduct the

proposed sale and that the proposed sale will conform to the provisions of ORS 480.110 to 480.165 and any rules [promulgated pursuant thereto] **adopted under ORS 480.110 to 480.165**. A fee may be charged for the permit. Subject to prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fee, the amount of the fee shall be set by rule and shall be adjusted subsequently by the State Fire Marshal to finance the administrative expenses incurred under this section and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

[(2) The permit required by subsection (1) of this section shall not be valid for more than one year from the date of issuance and shall authorize sales only between midnight June 22 and midnight July 6 of any given calendar year.]

[(3) Notwithstanding any other provision of law, the State Fire Marshal shall not prescribe limitations on the aggregate amount of items described in subsection (4) of this section at a sales facility operated by a person who holds the permit referred to in this section. However, such items shall be stored in accordance with such fire codes as the State Fire Marshal by rule may prescribe to insure safe storage of such materials. In prescribing such rules the State Fire Marshal may consider, among other matters, requirements of the United States Department of Transportation regarding the storage of hazardous materials.]

[(4) As used in this section:]

[(a) "Combination item" means a device that contains combinations of two or more of the effects described in paragraphs (b) to (g) of this subsection.]

[(b) "Cone fountain" means a cardboard or heavy paper cone containing not more than 50 grams of pyrotechnic composition. The effect upon ignition is the same as that of a cylindrical fountain.]

[(c) "Cylindrical fountain" means a cylindrical tube not more than three-fourths inch (19 mm) inside diameter and containing not more than 75 grams of pyrotechnic composition. Upon ignition, a shower of colored sparks and sometimes a whistling effect is produced. This device may be provided with a spike for insertion into the ground, a wood or plastic base for placing on the ground or a wood or cardboard handle if intended to be handheld.]

[(d) "Flitter sparkler" means a narrow paper tube containing not more than 100 grams of pyrotechnic composition that produces colored sparks upon ignition. The paper at one end of the tube is ignited to make the device function.]

[(e) "Ground spinner" means a small device similar to a wheel in design and effect and containing not more than 60 grams of pyrotechnic composition. When placed on the ground and ignited, a shower of colored sparks is produced by the rapidly spinning device.]

[(f) "Illuminating torch" means a cylindrical tube containing not more than 100 grams of pyrotechnic composition. This device may be provided with a spike for insertion into the ground, a wood or plastic base for placing on the ground or a wood or cardboard handle if intended to be handheld.]

[(g) "Wheel" means a pyrotechnic device attached to a post or tree by means of a nail or string. Each wheel may contain not more than six driver units or tubes not exceeding one-half inch (12.5 mm) inside diameter and containing not more than 60 grams of pyrotechnic composition. Upon ignition, the wheel revolves and produces a shower of colored sparks, and sometimes a whistling effect.]

(2) A retail sales permit issued under this section authorizes the sale of consumer fireworks only in the year for which the permit is issued during the period that begins on June 23 and ends on July 6 of the year for which the permit is issued.

(3) A retail sales permit holder shall store consumer fireworks in accordance with any fire codes that the State Fire Marshal adopts by rule to ensure safe storage of those fireworks. The matters that the State Fire Marshal considers when adopting storage rules for fireworks may include, but are not limited to, any United States Department of Transportation requirements relating to hazardous materials storage.

SECTION 4. ORS 480.130 is amended to read:

480.130. (1) All persons, municipalities, associations or organizations or groups of individuals desiring to sell, discharge, fire off, explode or display fireworks for a public display, or to sell *items*

described in ORS 480.127 (4) **consumer fireworks** to persons who possess the permit referred to in ORS 480.127, shall apply in writing to the State Fire Marshal for a permit at least 15 days in advance of the proposed sale or date of the display. The State Fire Marshal, upon receipt of such application, shall determine if the proposed sale or display will conform to law and any rules promulgated thereunder. If the State Fire Marshal finds that the applicant is qualified to conduct such sale or display and that the proposed sale or display is in accordance with the law and all rules, the State Fire Marshal shall issue a permit; otherwise the State Fire Marshal shall refuse to issue it.

(2) The fee for a permit for the public display of fireworks and each permit for **the sale of any fireworks** [*or items described in ORS 480.127 (4)*] shall be established by rule by the State Fire Marshal, subject to prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fee, and subsequently shall be adjusted to finance the administrative expenses incurred under this section and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. All fees collected shall be deposited to the credit of the State Fire Marshal Fund.

(3) Sales permits for fireworks [*or items described in ORS 480.127 (4) shall not be*] **are not** valid for more than one year from date of issue. A public display permit [*shall not be*] **is not** valid for more than 10 days from date of issuance and [*shall*] **may** authorize only one fireworks display during that period.

SECTION 5. ORS 480.150 is amended to read:

480.150. (1) The State Fire Marshal may adopt reasonable rules for granting permits for supervised public displays or sales of fireworks [*or items described in ORS 480.127 (4)*] by municipalities, fair associations, amusement parks, and other persons, organizations or groups of individuals. The governing body of any municipality, or of any county, may require liability insurance, or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or other form of indemnity deemed adequate by the municipality, or the county, from any person, in a sum not less than \$500, conditioned for payment of all damages which may be caused either to a person or property by reason of the authorized display or sale and arising from any acts of any person or agents, employees or subcontractors of the person. At the time a permit is revoked, the State Fire Marshal or approving authority may include in the revocation order a provision prohibiting the holder of the revoked permit from applying for or obtaining another such permit, for a period not to exceed three years from the revocation date, if the State Fire Marshal or approving authority finds that the circumstances of the permit holder's failure to comply with applicable sale or display statutes and regulations presented a significant fire hazard or other public safety danger.

(2) The State Fire Marshal or the approving authority of any governmental subdivision may revoke permits for display or sale of fireworks [*or items described in ORS 480.127*] when in the opinion of the State Fire Marshal or the approving authority the sale or display of fireworks [*or items described in ORS 480.127 (4)*] is not in compliance with applicable statutes and regulations governing such sale or displays.

(3) Permit fees required by ORS 480.130 shall not be refunded in the event such permits are revoked.

SECTION 6. ORS 480.152 is amended to read:

480.152. (1) No person shall publish or cause to be published:

(a) Any advertisement for the sale of fireworks the use or possession of which is declared unlawful by ORS 480.110 to 480.165.

(b) Any advertisement for the sale of [*items described in ORS 480.127*] **fireworks** in any county, municipality or fire protection district that by law or ordinance has declared the sale or use of [*such items*] **the fireworks** is prohibited.

(2) Subsection (1) of this section does not apply to any advertising medium [*which*] **that** accepts such advertising in good faith, without knowledge of the violation of law.

SECTION 7. ORS 480.154 is amended to read:

480.154. (1) Each manufacturer or wholesaler of fireworks [*or items described in ORS 480.127*] shall keep a record of all sales showing the name and address of the purchaser, the state of destination, license and permit numbers, the state and date of permit issuance and a list of the type and quantity of fireworks [*or items*] sold.

(2) All shipments of fireworks [*or items described in ORS 480.127*] coming into this state must show the appropriate permit number of the addressee on the outside of the package. If the permit number is not so shown, such shipment may be confiscated by a law enforcement officer or fire protection enforcement authority having jurisdiction.

SECTION 8. ORS 480.156 is amended to read:

480.156. (1) It is unlawful for any person to sell fireworks [*or items described in ORS 480.127,*] at wholesale to any out-of-state resident who does not possess and present to the seller for inspection at the time of sale a valid license or permit issued in the name of such out-of-state resident, if such license or permit is required to purchase, possess, transport, store, distribute, sell or otherwise deal with or use fireworks [*or items described in ORS 480.127,*] by the laws of such other state.

(2) The burden of ascertaining whether the laws of such other state require a license or permit and whether the purchaser possesses such a valid license or permit shall be entirely on the seller. Each seller shall record, in a manner prescribed by the State Fire Marshal, each sale described in this section. The record shall include the identification of type and quantity of fireworks sold, name of purchaser, state of destination, state issuing license or permit and number or other identifying description and date of issue of license or permit.

SECTION 9. ORS 480.160 is amended to read:

480.160. (1) Nothing in ORS 480.110 to 480.165, nor in any permit issued thereunder, shall authorize the manufacture, sale, use or discharge of fireworks [*or items described in ORS 480.127*] in any city, county or fire protection district in which such manufacture, sale, use or discharge is otherwise prohibited by law or municipal ordinance; nor shall any city, county or fire protection district authorize the sale or use of any fireworks prohibited by the provisions of ORS 480.110 to 480.165.

(2) For the purposes of enforcing ORS 480.110 to 480.165 in an area exempt under ORS 476.030 (3) within a rural fire protection district, the fire marshal, if there is one, or the fire chief of that rural fire protection district has the same enforcement authority as the State Fire Marshal.

(3) No person shall deliver or cause to be delivered into any county, municipality or rural fire protection district for the purpose of sale to individual members of the general public for personal use any [*items described in ORS 480.127*] **consumer fireworks** if the county, municipality or rural fire protection district by law or ordinance has declared that the sale or use of [*such items*] **the consumer fireworks** is prohibited.

(4) The manufacture, sale, use or discharge of fireworks [*or items described in ORS 480.127*] may be regulated by the governing body of a rural fire protection district, subject to the following conditions:

(a) The regulation must be by ordinance adopted by the governing body of the district, after public notice and hearing, not later than January 1 of any calendar year in which regulation is to be operative.

(b) The regulation shall not be operative within the boundaries of any city that regulates such matters by city ordinance.

(c) The regulation shall not prohibit the manufacture, sale, use or discharge of fireworks [*or items referred to in ORS 480.127,*] the manufacture, sale, use or discharge of which is authorized by ORS 480.110 to 480.165.

(d) The regulation may not limit sales to less than five days per calendar year, and must include the five consecutive day period beginning June 30.

SECTION 10. ORS 480.200 is amended to read:

480.200. As used in ORS 480.200 to 480.290 unless the context requires otherwise:

(1) "Certificate of possession" means a certificate issued under ORS 480.235 by the State Fire Marshal to applicants who have met the requirements of ORS 480.200 to 480.290.

(2) "Certificate of registration" means a certificate of registration issued under ORS 480.244 by the State Fire Marshal for an explosives magazine.

(3) "Explosive" means a chemical compound, mixture or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters, but excludes fireworks, as defined in [ORS 480.110 (1)] **section 2 of this 2013 Act**, black powder, smokeless powder, small arms ammunition, small arms ammunition primers and fertilizer, as defined in ORS 633.311.

(4) "Issuing authority" means the State Fire Marshal or an assistant appointed by the State Fire Marshal under ORS 480.280 (2).

(5) "Magazine" means an approved facility for the storage of explosives.

(6) "Small arms ammunition" means a shotgun, rifle, pistol or revolver cartridge.

(7) "Small arms ammunition primers" means small percussion-sensitive explosive charges encased in a cup and used to ignite propellant powder.

SECTION 11. ORS 164.055 is amended to read:

164.055. (1) A person commits the crime of theft in the first degree if, by means other than extortion, the person commits theft as defined in ORS 164.015 and:

(a) The total value of the property in a single or aggregate transaction is \$1,000 or more;

(b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an area affected by the riot, fire, explosion, catastrophe or other emergency;

(c) The theft is theft by receiving committed by buying, selling, borrowing or lending on the security of the property;

(d) The subject of the theft is a firearm or explosive;

(e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c); or

(f) The subject of the theft is a precursor substance.

(2) As used in this section:

(a) "Companion animal" means a dog or cat possessed by a person, business or other entity for purposes of companionship, security, hunting, herding or providing assistance in relation to a physical disability.

(b) "Explosive" means a chemical compound, mixture or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined in [ORS 480.110 (1)] **section 2 of this 2013 Act**, black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(c) "Firearm" has the meaning given that term in ORS 166.210.

(d) "Livestock animal" means a ratite, psittacine, horse, gelding, mare, filly, stallion, colt, mule, ass, jenny, bull, steer, cow, calf, goat, sheep, lamb, llama, pig or hog.

(e) "Precursor substance" has the meaning given that term in ORS 475.940.

(3) Theft in the first degree is a Class C felony.

SECTION 12. ORS 166.660 is amended to read:

166.660. (1) A person commits the crime of unlawful paramilitary activity if the person:

(a) Exhibits, displays or demonstrates to another person the use, application or making of any firearm, explosive or incendiary device or any technique capable of causing injury or death to persons and intends or knows that such firearm, explosive or incendiary device or technique will be unlawfully employed for use in a civil disorder; or

(b) Assembles with one or more other persons for the purpose of training with, practicing with or being instructed in the use of any firearm, explosive or incendiary device or technique capable of causing injury or death to persons with the intent to unlawfully employ such firearm, explosive or incendiary device or technique in a civil disorder.

(2)(a) Nothing in this section makes unlawful any act of any law enforcement officer performed in the otherwise lawful performance of the officer's official duties.

(b) Nothing in this section makes unlawful any activity of the State Department of Fish and Wildlife, or any activity intended to teach or practice self-defense or self-defense techniques, such as karate clubs or self-defense clinics, and similar lawful activity, or any facility, program or lawful activity related to firearms instruction and training intended to teach the safe handling and use of firearms, or any other lawful sports or activities related to the individual recreational use or possession of firearms, including but not limited to hunting activities, target shooting, self-defense, firearms collection or any organized activity including, but not limited to any hunting club, rifle club, rifle range or shooting range which does not include a conspiracy as defined in ORS 161.450 or the knowledge of or the intent to cause or further a civil disorder.

(3) Unlawful paramilitary activity is a Class C felony.

(4) As used in this section:

(a) "Civil disorder" means acts of physical violence by assemblages of three or more persons which cause damage or injury, or immediate danger thereof, to the person or property of any other individual.

(b) "Firearm" has the meaning given that term in ORS 166.210.

(c) "Explosive" means a chemical compound, mixture or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined in [ORS 480.110 (1)] **section 2 of this 2013 Act**, black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(d) "Law enforcement officer" means any duly constituted police officer of the United States, any state, any political subdivision of a state or the District of Columbia, and also includes members of the military reserve forces or National Guard as defined in 10 U.S.C. 101 (9), members of the organized militia of any state or territory of the United States, the Commonwealth of Puerto Rico or the District of Columbia not included within the definition of National Guard as defined by 10 U.S.C. 101 (9), members of the Armed Forces of the United States and such persons as are defined in ORS 161.015 (4) when in the performance of official duties.

SECTION 13. ORS 480.110 is repealed.

SECTION 14. (1) The amendments to ORS 164.055 and 166.660 by sections 11 and 12 of this 2013 Act apply to offenses committed on or after the effective date of this 2013 Act.

(2) The amendments to ORS 480.200 by section 10 of this 2013 Act apply to violations of provisions of ORS 480.200 to 480.290 committed on or after the effective date of this 2013 Act.

Passed by Senate February 12, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House March 20, 2013

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Tina Kotek, Speaker of House

Received by Governor:

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Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State