

# House Bill 3194

Sponsored by Representatives FAHEY, BONHAM, Senator HEARD (at the request of Jim Laden)

## 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**.

Authorizes self-service dispensing of Class 1 flammable liquids at retail dispensary.

### A BILL FOR AN ACT

Relating to the dispensing of Class 1 flammable liquids; creating new provisions; amending ORS 479.180, 480.340, 480.341, 480.343, 480.345, 480.347 and 480.349; and repealing ORS 480.315, 480.320 and 480.330.

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

**SECTION 1. ORS 480.310 and 480.343 and section 2 of this 2019 Act are added to and made a part of ORS 480.315 to 480.385.**

**SECTION 2. (1) A filling station, service station, garage or other dispensary where Class 1 flammable liquids are dispensed at retail may designate not more than 25 percent of the fuel dispensing devices for self-service use by customers. A self-service fuel dispensing device may be equipped with an automated payment device and must be equipped with an automatic nozzle described in ORS 480.340.**

**(2) Except as provided in ORS 480.341 and 480.343, a dispensary may allow self-service dispensing of Class 1 flammable liquids at retail only during hours that the dispensary makes an owner, operator or employee of the dispensary available for the dispensing of Class 1 flammable liquids.**

**(3) A dispensary may not offer a Class 1 flammable liquid at a self-service fuel dispensing device unless the dispensary offers the same Class 1 flammable liquid at a fuel dispensing device reserved for use by an owner, operator or employee of the dispensary. The price charged for the Class 1 flammable liquid must be identical at the self-service fuel dispensing device and any fuel dispensing device reserved for use by an owner, operator or employee of the dispensary.**

**(4) This section does not apply to a dispensary for aviation fuels.**

**(5) Sales under subsection (2) of this section do not make a filling station, service station, garage or other dispensary where Class 1 flammable liquids are dispensed at retail subject to any provisions of ORS 480.315 to 480.385 regulating nonretail facilities.**

**(6) This section does not prohibit, limit or condition any dispensing of Class 1 flammable liquids or diesel fuel otherwise authorized under ORS 480.315 to 480.385.**

**SECTION 3. ORS 480.340 is amended to read:**

**480.340.** An owner, operator or employee of a filling station, service station, garage or other dispensary where Class 1 flammable liquids, except aviation fuels, are dispensed at retail may not install or use or permit the use of[:]

**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 [(1) A coin-operated or self-service dispensing device for the liquids.]

2 [(2)] a device that permits the dispensing of the liquids when [*the hand of*] the operator of the  
3 discharge nozzle [*is removed*] **removes the operator's hand** from the control lever, [*except one*]  
4 **unless the device is** equipped with an automatic nozzle of a type that has been approved by the  
5 State Fire Marshal and that has [*a latch-open device*] as an integral part of the **automatic nozzle**  
6 assembly[,] **a latch-open device** capable of shutting off the flow of the liquids reliably when the tank  
7 is filled or when the nozzle falls or slips from the filling neck of the tank. [*A person may not use*  
8 *an automatic nozzle to dispense the liquids unless the owner, operator or employee is in the immediate*  
9 *vicinity of the tank being filled.*]

10 **SECTION 4.** ORS 480.341 is amended to read:

11 480.341. (1) As used in this section:

12 (a) "Eastern Oregon" means that portion of the State of Oregon lying east of a line beginning  
13 at the intersection of the northern boundary of this state and the western boundary of Hood River  
14 County, and from there proceeding southerly along the western boundaries of Hood River, Wasco,  
15 Jefferson, Deschutes and Klamath Counties to the southern boundary of this state.

16 (b) "Low-population county" means a county that, based on a certificate of population prepared  
17 under ORS 190.510 to 190.610, has a population of not more than 40,000.

18 (2) [*Notwithstanding ORS 480.320, 480.330 and 480.340, and*] Subject to subsection (3) of this  
19 section, if a filling station, service station, garage or other dispensary where Class 1 flammable liq-  
20 uids are dispensed at retail is located in a low-population county of eastern Oregon, the owner or  
21 operator may[:]

22 [(a)] permit a [*person other than an owner, operator or employee*] **customer** to use or manipulate  
23 a device for dispensing liquids into the fuel tank of a motor vehicle or other retail container, **re-**  
24 **gardless of whether an owner, operator or employee of the dispensary is present at the**  
25 **dispensary.**[:]

26 [(b) *Permit the use of an installed coin-operated or self-service dispensing device for the liquids;*  
27 *and*]

28 [(c) *Allow the use of an automatic nozzle to dispense the liquids without an owner, operator or*  
29 *employee being in the immediate vicinity of the tank or container being filled.*]

30 (3) If the site of a dispensary described in subsection (2) of this section includes retail space  
31 providing goods or services, other than goods or services for maintaining, repairing or cleaning a  
32 motor vehicle, the dispensary shall make an owner, operator or employee available for dispensing  
33 Class 1 flammable liquids after 6 a.m. and before 6 p.m.

34 (4) **Notwithstanding section 2 (1) of this 2019 Act and subject to subsection (3) of this**  
35 **section, a dispensary described in subsection (2) of this section that has fewer than four fuel**  
36 **dispensing devices for the dispensing of Class 1 flammable liquids may designate one fuel**  
37 **dispensing device to be available for self-service use by customers.**

38 [(4)] (5) [*Notwithstanding ORS 480.320, 480.330, 480.340 and 480.345,*] If a nonretail facility is  
39 located in a low-population county of eastern Oregon, the owner or operator may, **subject to ORS**  
40 **480.340:**

41 (a) Permit the dispensing of Class 1 flammable liquids at retail;

42 (b) Permit a person other than an owner, operator, employee or nonretail customer to use or  
43 manipulate a device for dispensing liquids into the fuel tank of a motor vehicle or other retail con-  
44 tainer; **and**

45 (c) Permit the use of an installed [*coin-operated*] **automated payment** or self-service dispensing

1 **fuel** device for the liquids.[: and]

2 [(d) Allow the use of an automatic nozzle to dispense the liquids without an owner, operator or  
3 employee being in the immediate vicinity of the tank or container being filled.]

4 [(5)(a)] **(6)(a)** Sales under subsection (2) of this section do not make a filling station, service  
5 station, garage or other dispensary where Class 1 flammable liquids are dispensed at retail subject  
6 to any provisions of ORS 480.315 to 480.385 regulating nonretail facilities.

7 (b) Sales under subsection [(4)] **(5)** of this section do not require that a nonretail facility possess  
8 a license to dispense Class 1 flammable liquids at retail.

9 (c) Sales under subsection [(4)] **(5)** of this section do not require that a nonretail facility possess  
10 a conditional use license issued under ORS 480.355. However, sales under subsection [(4)] **(5)** of this  
11 section do not prevent a nonretail facility that qualifies under ORS 480.355 from also possessing a  
12 conditional use license.

13 (d) Purchasing Class 1 flammable liquids under subsection [(4)] **(5)** of this section does not make  
14 a retail customer subject to any gallonage requirement set forth in ORS 480.345.

15 (e) Purchasing Class 1 flammable liquids under subsection [(4)] **(5)** of this section does not make  
16 a retail customer subject to rules of the State Fire Marshal establishing safety training require-  
17 ments.

18 [(6)] **(7)** This section does not prohibit, limit or condition any dispensing of Class 1 flammable  
19 liquids or diesel fuel otherwise authorized under ORS 480.315 to 480.385.

20 [(7)] **(8)** No later than 90 days prior to commencing sales under subsection [(4)] **(5)** of this sec-  
21 tion, a nonretail facility shall notify the State Fire Marshal that the facility plans to dispense Class  
22 1 flammable liquids at retail under this section.

23 [(8)] **(9)** If a county where sales are authorized under this section ceases to be a low-population  
24 county, dispensaries and nonretail facilities located within the county may operate as described in  
25 this section notwithstanding the change in county population.

26 **SECTION 5.** ORS 480.343 is amended to read:

27 480.343. (1) [Notwithstanding ORS 480.320, 480.330 and 480.340,] If a filling station, service sta-  
28 tion, garage or other dispensary where Class 1 flammable liquids are dispensed at retail is located  
29 in Clatsop, Curry or Tillamook County, **subject to subsection (3) of this section** the owner or  
30 operator may, after 6 p.m. and before 6 a.m.,[:]

31 [(a)] permit a [person other than an owner, operator or employee] **customer** to use or manipulate  
32 a device for dispensing liquids into the fuel tank of a motor vehicle or other retail container, **re-**  
33 **gardless of whether an owner, operator or employee of the dispensary is present at the**  
34 **dispensary.**[:]

35 [(b) Permit the use of an installed coin-operated or self-service dispensing device for the liquids;  
36 and]

37 [(c) Allow the use of an automatic nozzle to dispense the liquids without an owner, operator or  
38 employee being in the immediate vicinity of the tank or container being filled.]

39 (2) A dispensary described in this section is not subject to any provisions of ORS 480.315 to  
40 480.385 regulating nonretail facilities.

41 (3) If the site of a dispensary described in subsection (1) of this section includes retail space  
42 providing goods or services, other than goods or services for maintaining, repairing or cleaning a  
43 motor vehicle, the dispensary shall make an owner, operator or employee available for dispensing  
44 Class 1 flammable liquids during the time after 6 p.m. and before 6 a.m., if any, that the retail space  
45 is open for business.

1       **(4) Notwithstanding section 2 (1) of this 2019 Act and subject to subsection (3) of this**  
2 **section, a dispensary described in subsection (1) of this section that has fewer than four fuel**  
3 **dispensing devices for the dispensing of Class 1 flammable liquids may designate one fuel**  
4 **dispensing device to be available for self-service use by customers.**

5       **SECTION 6.** ORS 479.180 is amended to read:

6       479.180. (1) If the owner, lessee, agent or occupant is aggrieved by the order of an officer under  
7 the provisions of ORS 476.030, 479.170, 479.210 to 479.220, 480.123 to 480.160, [~~480.330, 480.340,~~  
8 **480.315 to 480.385**, 480.420 to 480.434 or 480.450 and desires a hearing, the person may complain or  
9 appeal in writing to the State Fire Marshal within 10 days from the service of the order. The com-  
10 plaint or appeal shall set forth the specific grounds of the complaint or appeal and no other ground  
11 shall be considered thereafter. The complaint or appeal shall be accompanied by a fee of \$40 payable  
12 to the State Fire Marshal, and the State Fire Marshal may refer the complaint or appeal to the re-  
13 gional appeal advisory board established for that region by notifying the chairperson of that board  
14 and sending a copy of the notice to the complainant or appellant. The board shall fix a time for  
15 hearing and notify the complainant or appellant of the time and place thereof, which shall be within  
16 10 days after such referral by the State Fire Marshal. If the State Fire Marshal does not refer the  
17 matter to a regional appeal advisory board, the State Fire Marshal shall fix a time and place, not  
18 less than five and not more than 10 days thereafter, when and where the complaint or appeal will  
19 be heard by the State Fire Marshal. Within 10 days after receiving a recommendation from the re-  
20 gional appeal advisory board, or if no referral was made to such board, within 10 days after the  
21 hearing before the State Fire Marshal, the State Fire Marshal may affirm, modify, revoke or vacate  
22 the order complained of or appealed from. Unless the order is modified, revoked or vacated by the  
23 State Fire Marshal, it shall remain in force and be complied with by the owner, lessee, agent or  
24 occupant, and within the time fixed in the order or fixed by the State Fire Marshal. If the State Fire  
25 Marshal vacates or revokes the order complained of or appealed from, or modified it in any partic-  
26 ular other than extending time for compliance, the fee paid with the complaint or appeal shall be  
27 refunded. Otherwise, it shall be credited to appropriate state funds, and the State Fire Marshal shall  
28 so notify the State Treasurer.

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

42       (3) The State Fire Marshal shall make or have made a certified summary of the proceedings at  
43 the hearing before the regional appeal advisory board or before the State Fire Marshal, and together  
44 with all the evidentiary matter filed in the office of the State Fire Marshal or presented to the re-  
45 gional appeal advisory board, transmit them to the circuit court at least three days prior to the date

1 fixed by the court for hearing when it shall be tried de novo.

2 **SECTION 7.** ORS 480.345 is amended to read:

3 480.345. [*Notwithstanding ORS 480.330 and 480.340,*] The owner, operator or employee of a dis-  
 4 pensing facility may permit nonretail customers other than the owner, operator or employee to use  
 5 or manipulate at the dispensing facility a card activated or key activated device for dispensing Class  
 6 1 flammable liquids into the fuel tank of a motor vehicle or other container under the following  
 7 conditions:

8 (1) The owner or operator shall hold a current nonretail facility license issued by the State Fire  
 9 Marshal under ORS 480.350;

10 (2) Except as provided in ORS 480.360, a nonretail customer shall purchase at least 900 gallons  
 11 of Class 1 flammable liquids or diesel fuel from any source during a 12-month period or, if the  
 12 amount of such liquids or fuel purchased is less than 900 gallons annually, file documentation that:

13 (a) The fuel qualifies as a deductible farming expense on the customer's federal income tax re-  
 14 turn;

15 (b) The fuel was purchased by a governmental agency providing fire, ambulance or police ser-  
 16 vices; or

17 (c) The fuel was purchased by:

18 (A) A people's utility district organized under ORS chapter 261;

19 (B) A domestic water supply district organized under ORS chapter 264;

20 (C) A mass transit district organized under ORS 267.010 to 267.390;

21 (D) A metropolitan service district organized under ORS chapter 268;

22 (E) A special road district organized under ORS 371.305 to 371.360;

23 (F) A 9-1-1 communications district organized under ORS 403.300 to 403.380;

24 (G) A sanitary district organized under ORS 450.005 to 450.245;

25 (H) A sanitary authority, water authority or joint water and sanitary authority organized under  
 26 ORS 450.600 to 450.989;

27 (I) A rural fire protection district organized under ORS chapter 478;

28 (J) A water improvement district organized under ORS chapter 552;

29 (K) A water control district organized under ORS chapter 553; or

30 (L) A port organized under ORS chapter 777.

31 (3) The nonretail customer shall provide a federal employer identification number or equivalent  
 32 documentation to indicate participation in a business or employment with a government agency or  
 33 nonprofit or charitable organization;

34 (4) The nonretail customer, other than the owner or operator, dispensing Class 1 flammable  
 35 liquids shall be employed by a business, government agency or nonprofit or charitable organization  
 36 and shall dispense Class 1 flammable liquids only into the fuel tank of a motor vehicle or other  
 37 container owned or used by the business, government agency or nonprofit or charitable organization;

38 (5) The nonretail customer, other than the owner, operator or employee, dispensing Class 1  
 39 flammable liquids shall have satisfied safety training requirements in compliance with rules of the  
 40 State Fire Marshal; and

41 (6) The owner or operator shall enter into a written agreement with nonretail customers per-  
 42 mitted under this section to dispense fuel at the nonretail facility. Except as otherwise provided in  
 43 ORS 480.355, the agreement shall at a minimum:

44 (a) Certify that the nonretail customer will purchase at least 900 gallons of Class 1 flammable  
 45 liquids or diesel fuel from any source during a 12-month period or, if the amount of such liquids or

1 fuel purchased is less than 900 gallons annually, file documentation that:

2 (A) The fuel qualifies as a deductible farming expense on the customer's federal income tax re-  
3 turn; or

4 (B) The fuel was purchased by a governmental agency providing fire, ambulance or police ser-  
5 vices;

6 (b) Provide a federal employer identification number or equivalent documentation to indicate  
7 participation in a business or employment with a government agency or nonprofit or charitable or-  
8 ganization;

9 (c) Certify that the nonretail customer is employed by a business, government agency or  
10 nonprofit or charitable organization and that the nonretail customer shall dispense Class 1  
11 flammable liquids only into the fuel tank of a motor vehicle or other container owned or used by  
12 the business, government agency or nonprofit or charitable organization;

13 (d) Certify that the nonretail customer has satisfied safety training requirements in compliance  
14 with rules of the State Fire Marshal; and

15 (e) Require the nonretail customer to submit a sworn statement, as defined in ORS 162.055, that  
16 the information supplied in the agreement is true and correct.

17 **SECTION 8.** ORS 480.347 is amended to read:

18 480.347. [*Notwithstanding ORS 480.330 and 480.340,*] **Notwithstanding any restriction in ORS**  
19 **480.341, 480.343 or 480.345 or section 2 of this 2019 Act,** during an emergency as defined in ORS  
20 401.025, the owner, operator or employee of a dispensing facility may permit nonretail customers,  
21 other than the owner, operator or employee, to use or manipulate at the dispensing facility a card  
22 activated or key activated device for dispensing Class 1 flammable liquids into the fuel tank of a  
23 vehicle or other container if:

24 (1) The owner or operator holds a current nonretail facility license issued by the State Fire  
25 Marshal under ORS 480.350;

26 (2) The fuel is dispensed to an emergency service agency as defined in ORS 401.025 or to an  
27 entity authorized by an emergency service agency to provide services during an emergency;

28 (3) The nonretail customer, other than the owner or operator, dispensing Class 1 flammable  
29 liquids is a qualified emergency service volunteer as defined in ORS 401.358 or an owner or em-  
30 ployee of the entity authorized by the emergency service agency to provide services during an  
31 emergency and dispenses Class 1 flammable liquids only into the fuel tank of a vehicle or other  
32 container owned and used by the emergency service agency or the entity authorized by that agency  
33 to provide services during an emergency; and

34 (4) The nonretail customer, other than the owner, operator or employee, dispensing Class 1  
35 flammable liquids satisfies safety training requirements in compliance with rules of the State Fire  
36 Marshal.

37 **SECTION 9.** ORS 480.349 is amended to read:

38 480.349. (1) As used in this section, "motorcycle" has the meaning given that term in ORS  
39 801.365.

40 [*(2) Notwithstanding ORS 480.330 and 480.340:*]

41 **(2) Except as provided in subsection (4) of this section:**

42 (a) Upon the request of an operator of a motorcycle, the owner, operator or employee of a filling  
43 station, service station, garage or other dispensary where Class 1 flammable liquids are dispensed  
44 at retail shall set the fuel dispensing device and hand the discharge nozzle to the operator of the  
45 motorcycle.

1 (b) An operator of a motorcycle who is handed a discharge nozzle under paragraph (a) of this  
2 subsection:

3 (A) May dispense Class 1 flammable liquids into the operator's motorcycle.

4 (B) Shall, after dispensing the liquids, return the discharge nozzle to the owner, operator or  
5 employee.

6 (3) The owner, operator or employee who is handed the discharge nozzle shall return the nozzle  
7 to the pump or take any other actions necessary to ensure safe completion of the fueling operation.

8 **(4) Subsections (2) and (3) of this section do not apply to the operator of a self-service**  
9 **fuel dispensing device as provided under ORS 480.341 or 480.343 or section 2 of this 2019 Act.**  
10 **SECTION 10. ORS 480.315, 480.320 and 480.330 are repealed.**  
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