

Enrolled
House Bill 2426

Sponsored by Representatives BOSHART DAVIS, FAHEY, Senators BONHAM, SOLLMAN; Representatives CONRAD, DIEHL, GAMBA, GOODWIN, JAVADI, LEVY E, LEWIS, MCINTIRE, OSBORNE, RESCHKE, SCHARF, STOUT, Senator SMITH DB (Presession filed.)

CHAPTER

AN ACT

Relating to the dispensing of Class 1 flammable liquids; creating new provisions; amending ORS 479.180, 480.340, 480.341, 480.344, 480.345 and 480.347; repealing ORS 480.315, 480.320, 480.330, 480.343 and 480.349; and declaring an emergency.

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

SECTION 1. ORS 480.310 and section 2 of this 2023 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 not designate more than the same number of fuel dispensing devices for self-service use by customers as are designated for attended service by an owner, operator or employee of the dispensary of Class 1 flammable liquids.

(2) A self-service fuel dispensing device may be equipped with an automated payment device and must be equipped with an automatic nozzle as described in ORS 480.340.

(3) A filling station, service station, garage or other dispensary offering fuel dispensing devices for self-service must:

(a) Post one or more notification signs that are clearly readable by an operator of a motor vehicle stating which fuel dispensing devices are designated for self-service and which fuel dispensing devices are designated for attended service by an owner, operator or employee of the dispensary of Class 1 flammable liquids; and

(b) Designate at least one person to provide attended service.

(4) Except as provided in ORS 480.341 and subsection (7) of this section, a filling station, service station, garage or other 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.

(5) The price charged for Class 1 flammable liquids must be identical at a self-service fuel dispensing device and at any fuel dispensing device reserved for use by an owner, operator or employee of a dispensary.

(6) Sales under subsection (4) 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.

(7) The operator of a motorcycle, as defined in ORS 801.365, may dispense Class 1 flammable liquids into the operator's motorcycle, regardless of whether an owner, operator

or employee of the dispensary offers use of self-service fuel dispensing devices for use by customers.

(8) 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[.]

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

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

SECTION 4. ORS 480.341 is amended to read:

480.341. *[(1) As used in this section:]*

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

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

(1) As used in this section, "rural Oregon" means Baker, Clatsop, Crook, Curry, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties.

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

[(a)] permit a [person other than an owner, operator or employee] customer to use or manipulate a device for dispensing liquids into the fuel tank of a motor vehicle or other retail container, regardless of whether an owner, operator or employee of the dispensary is present at the dispensary.[;]

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

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

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

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

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

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

(c) Permit the use of an installed [*coin-operated*] **automated payment** or self-service dispensing fuel device for the liquids.]; *and*]

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

(5)(a) 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.

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

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

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

(e) Purchasing Class 1 flammable liquids under subsection (4) of this section does not make a retail customer subject to rules of the State Fire Marshal establishing safety training requirements.

(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.

(7) No later than 90 days prior to commencing sales under subsection (4) of this section, a nonretail facility shall notify the State Fire Marshal that the facility plans to dispense Class 1 flammable liquids at retail under this section.

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

SECTION 5. 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, 479.170, 479.210 to 479.220, 480.123 to 480.160, [*480.330, 480.340,*] **480.315 to 480.385**, 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 Department 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 with the department 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 6. ORS 480.345 is amended to read:

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

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

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

(a) The fuel qualifies as a deductible farming expense on the customer's federal income tax return;

(b) The fuel was purchased by a governmental agency providing fire, ambulance or police services; or

(c) The fuel was purchased by:

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

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

(C) A mass transit district organized under ORS 267.010 to 267.394;

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

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

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

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

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

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

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

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

(L) A port organized under ORS chapter 777.

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

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

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

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

(a) Certify that the nonretail customer will purchase at least 900 gallons of Class 1 flammable liquids or diesel fuel from any source during a 12-month period or, if the amount of such liquids or fuel purchased is less than 900 gallons annually, file documentation that:

(A) The fuel qualifies as a deductible farming expense on the customer's federal income tax return; or

(B) The fuel was purchased by a governmental agency providing fire, ambulance or police services;

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

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

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

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

SECTION 7. ORS 480.347 is amended to read:

480.347. [Notwithstanding ORS 480.330 and 480.340,] **Notwithstanding any restriction in ORS 480.341 or 480.345 or section 2 of this 2023 Act**, during an emergency as defined in ORS 401.025, the owner, operator or employee of a dispensing facility may permit nonretail customers, other than the owner, operator or employee, to use or manipulate at the dispensing facility a card activated or key activated device for dispensing Class 1 flammable liquids into the fuel tank of a vehicle or other container if:

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

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

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

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

SECTION 8. ORS 480.344 is amended to read:

480.344. A filling station, service station, garage or other dispensary subject to ORS 480.341 [or 480.343] **or section 2 of this 2023 Act**, that makes an owner, operator or employee available for dispensing Class 1 flammable liquids, shall provide equal access to the dispensing services of the dispensary to persons with disabilities. Equal access shall be provided by:

(1) Posting a sign that is clearly readable by an operator of a motor vehicle that notifies persons with disabilities that refueling assistance may be requested by:

(a) Contacting the dispensary owner, operator or employee at the telephone number provided in the sign; and

(b) Signaling to the dispensary owner, operator or employee in any other manner described in the sign;

(2) Providing refueling assistance upon request of a person with a disability; and

(3) Providing refueling assistance without charging an additional service fee.

SECTION 9. ORS 480.315, 480.320, 480.330, 480.343 and 480.349 are repealed.

SECTION 10. The Department of the State Fire Marshal, in collaboration with organizations representing filling stations, service stations, garages or other dispensaries, may engage in public outreach efforts to educate the public generally about the changes in attended fuel service laws and to educate operators of filling stations, service stations, garages or other dispensaries where Class 1 flammable liquids are dispensed at retail about the requirements under section 2 of this 2023 Act, the amendments to ORS 479.180, 480.340, 480.341, 480.344, 480.345 and 480.347 by sections 3 to 8 of this 2023 Act and the repeal of ORS 480.315, 480.320, 480.330, 480.343 and 480.349 by section 9 of this 2023 Act.

SECTION 11. Section 10 of this 2023 Act is repealed on January 2, 2024.

SECTION 12. Notwithstanding ORS 480.385, the State Fire Marshal may only impose civil penalties for conduct violating section 2 of this 2023 Act or the amendments to ORS 479.180, 480.340, 480.341, 480.344, 480.345 and 480.347 by sections 3 to 8 of this 2023 Act, if the conduct occurs on or after March 1, 2024.

SECTION 13. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by House March 20, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 21, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State