

House Bill 3526

Sponsored by Representatives HARTMAN, OWENS, HELM; Representatives GAMBA, WALTERS, Senators MAN-
NING JR, MEEK

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: This Act says that a buyer of real estate may sue the seller if the seller does not give the buyer well test results. (Flesch Readability Score: 76.7).

Establishes a cause of action for a buyer in a real estate transaction if the seller fails to provide the results of required well tests. Modifies well testing requirements to require that a seller provide a copy of well test results to the Department of Environmental Quality.

Modifies the form of the seller's property disclosure statement.

A BILL FOR AN ACT

1
2 Relating to exempt wells that supply water for domestic purposes; amending ORS 105.464 and
3 448.271.

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

5 **SECTION 1.** ORS 448.271 is amended to read:

6 448.271. (1) In any transaction for the sale or exchange of real estate that includes [*a well*] **an**
7 **exempt well** that supplies ground water for domestic purposes, the seller of the real estate shall,
8 *upon accepting an offer to purchase that real estate,*] have the **exempt** well tested for arsenic, nitrates
9 and total coliform bacteria. The Oregon Health Authority also may, by rule, require additional tests
10 for specific contaminants in specific areas of public health concern. The seller shall submit the re-
11 sults of the tests required under this section to the [*authority*] **Department of Environmental**
12 **Quality** and to the buyer. [*within 90 days of receiving the results of the tests.*]

13 **(2)(a) A buyer has a cause of action against a seller for damages if:**

14 **(A) The seller did not provide the results of the test to the buyer as required by this**
15 **section; and**

16 **(B) An exempt well required to be tested under this section contains, at levels in excess**
17 **of any maximum contaminant level, arsenic, nitrates or total coliform bacteria, or any other**
18 **contaminant if testing is required by the authority in a specific area of public health concern.**

19 **(b) Any cause of action granted by this subsection is barred unless the cause of action**
20 **is commenced within five years of the date that the transaction closed.**

21 [(2)] **(3)** The failure of a seller to comply with the provisions of this section does not invalidate
22 an instrument of conveyance executed in the transaction.

23 **(4) As used in this section, "exempt well" means a well used for exempt purposes under**
24 **ORS 537.545 (1)(b) or (d).**

25 **SECTION 2.** ORS 105.464 is amended to read:

26 105.464. A seller's property disclosure statement must be in substantially the following form:
27
28

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

4 _____
5
6 INSTRUCTIONS TO THE SELLER
7

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

12
13 Each seller of residential property described in ORS 105.465 must deliver this form to each buyer
14 who makes a written offer to purchase. Under ORS 105.475 (4), refusal to provide this form gives the
15 buyer the right to revoke their offer at any time prior to closing the transaction. Use only the
16 section(s) of the form that apply to the transaction for which the form is used. If you are claiming
17 an exclusion under ORS 105.470, fill out only Section 1.

18
19 An exclusion may be claimed only if the seller qualifies for the exclusion under the law. If not ex-
20 cluded, the seller must disclose the condition of the property or the buyer may revoke their offer
21 to purchase anytime prior to closing the transaction. Questions regarding the legal consequences
22 of the seller's choice should be directed to a qualified attorney.

23 _____
24
25 **(DO NOT FILL OUT THIS SECTION UNLESS YOU ARE CLAIMING AN EXCLUSION**
26 **UNDER ORS 105.470)**

27
28 Section 1. EXCLUSION FROM ORS 105.462 TO 105.490:

29
30 You may claim an exclusion under ORS 105.470 only if you qualify under the statute. If you are not
31 claiming an exclusion, you must fill out Section 2 of this form completely.

32
33 Initial only the exclusion you wish to claim.

34
35 _____ This is the first sale of a dwelling never occupied. The dwelling is constructed or installed
36 under building or installation permit(s) #_____, issued by _____.

37
38 _____ This sale is by a financial institution that acquired the property as custodian, agent or
39 trustee, or by foreclosure or deed in lieu of foreclosure.

40
41 _____ The seller is a court appointed receiver, personal representative, trustee, conservator or
42 guardian.

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44 _____ This sale or transfer is by a governmental agency.
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Signature(s) of Seller claiming exclusion
Date _____

Buyer(s) to acknowledge Seller's claim
Date _____

(IF YOU DID NOT CLAIM AN EXCLUSION IN SECTION 1, YOU MUST FILL OUT THIS SECTION.)

Section 2. SELLER'S PROPERTY DISCLOSURE STATEMENT

(NOT A WARRANTY)
(ORS 105.464)

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

DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE. BUYER HAS FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO REVOKE BUYER'S OFFER BY DELIVERING BUYER'S SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S DISCLOSURE STATEMENT, UNLESS BUYER WAIVES THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY, BUYER IS ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED SPECIALIST TO INSPECT THE PROPERTY ON BUYER'S BEHALF INCLUDING, FOR EXAMPLE, ONE OR MORE OF THE FOLLOWING: ARCHITECTS, ENGINEERS, PLUMBERS, ELECTRICIANS, ROOFERS, ENVIRONMENTAL INSPECTORS, BUILDING INSPECTORS, CERTIFIED HOME INSPECTORS, OR PEST AND DRY ROT INSPECTORS.

Seller _____ is/ _____ is not occupying the property.

I. SELLER'S REPRESENTATIONS:

The following are representations made by the seller and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have or take a security interest in the property, or any real estate licensee engaged by the seller or the buyer.

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

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1. TITLE

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

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

(1) First right of refusal

(2) Option

(3) Lease or rental agreement

(4) Other listing

(5) Life estate?

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

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

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

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

*G. Are there any governmental studies, designations, zoning overlays, surveys or notices that would affect the property? []Yes []No []Unknown

*H. Are there any pending or existing governmental assessments against the property? []Yes []No []Unknown

*I. Are there any zoning violations or nonconforming uses? []Yes []No []Unknown

*J. Is there a boundary survey for the property? []Yes []No []Unknown

*K. Are there any covenants, conditions, restrictions or private assessments that affect the property? []Yes []No []Unknown

*L. Is the property subject to any special tax assessment or tax treatment that may result in levy of additional taxes if the property is sold? []Yes []No []Unknown

2. WATER

A. Household water

(1) The source of the water is (check ALL that apply):

[]Public []Community []Private

[]Other _____

(2) Water source information:

*a. Does the water source require a water permit? []Yes []No []Unknown

1 If yes, do you have a permit? []Yes []No

2 b. Is the water source located on the property? []Yes []No []Unknown

3 *If not, are there any written agreements for

4 a shared water source? []Yes []No []Unknown []NA

5 *c. Is there an easement (recorded or unrecorded)

6 for your access to or maintenance of the water

7 source? []Yes []No []Unknown

8 d. If the source of water is from a well or spring,

9 have you had any of the following in the past

10 12 months? []Flow test []Bacteria test,

11 **including E. coli** []Chemical contents test,

12 **including arsenic and nitrates** []Yes []No []Unknown []NA

13 ***If yes, have you included the results with**

14 **this statement and provided the results to the**

15 **Department of Environmental Quality (DEQ)?** []Yes []No

16 *e. Are there any water source plumbing problems

17 or needed repairs? []Yes []No []Unknown

18 (3) Are there any water treatment systems for

19 the property? []Yes []No []Unknown

20 []Leased []Owned

21 B. Irrigation

22 (1) Are there any [] water rights or [] other

23 irrigation rights for the property? []Yes []No []Unknown

24 *(2) If any exist, has the irrigation water been

25 used during the last five-year period? []Yes []No []Unknown []NA

26 *(3) Is there a water rights certificate or other

27 written evidence available? []Yes []No []Unknown []NA

28 C. Outdoor sprinkler system

29 (1) Is there an outdoor sprinkler system for the

30 property? []Yes []No []Unknown

31 (2) Has a back flow valve been installed? []Yes []No []Unknown []NA

32 (3) Is the outdoor sprinkler system operable? []Yes []No []Unknown []NA

33

34 3. SEWAGE SYSTEM

35 A. Is the property connected to a public or

36 community sewage system? []Yes []No []Unknown

37 B. Are there any new public or community sewage

38 systems proposed for the property? []Yes []No []Unknown

39 C. Is the property connected to an on-site septic

40 system? []Yes []No []Unknown

41 (1) If yes, when was the system installed? _____ []Unknown []NA

42 (2) *If yes, was the system installed by permit? []Yes []No []Unknown []NA

43 (3) *Has the system been repaired or altered? []Yes []No []Unknown

44 (4) *Has the condition of the system been

45 evaluated and a report issued? []Yes []No []Unknown

- 1 (5) Has the septic tank ever been pumped? []Yes []No []Unknown
 2 If yes, when? _____ []NA
 3 (6) Does the system have a pump? []Yes []No []Unknown
 4 (7) Does the system have a treatment unit such
 5 as a sand filter or an aerobic unit? []Yes []No []Unknown
 6 (8) *Is a service contract for routine
 7 maintenance required for the system? []Yes []No []Unknown
 8 (9) Are all components of the system located on
 9 the property? []Yes []No []Unknown
 10 D. *Are there any sewage system problems or
 11 needed repairs? []Yes []No []Unknown
 12 E. Does your sewage system require on-site
 13 pumping to another level? []Yes []No []Unknown
 14
 15 4. DWELLING INSULATION
 16 A. Is there insulation in the:
 17 (1) Ceiling? []Yes []No []Unknown
 18 (2) Exterior walls? []Yes []No []Unknown
 19 (3) Floors? []Yes []No []Unknown
 20 B. Are there any defective insulated doors or
 21 windows? []Yes []No []Unknown
 22
 23 5. DWELLING STRUCTURE
 24 *A. Has the roof leaked? []Yes []No []Unknown
 25 If yes, has it been repaired? []Yes []No []Unknown []NA
 26 B. Are there any additions, conversions or
 27 remodeling? []Yes []No []Unknown
 28 If yes, was a building permit required? []Yes []No []Unknown []NA
 29 If yes, was a building permit obtained? []Yes []No []Unknown []NA
 30 If yes, was final inspection obtained? []Yes []No []Unknown []NA
 31 C. Are there smoke alarms or detectors? []Yes []No []Unknown
 32 D. Are there carbon monoxide alarms? []Yes []No []Unknown
 33 E. Is there a woodstove or fireplace
 34 insert included in the sale? []Yes []No []Unknown
 35 *If yes, what is the make? _____
 36 *If yes, was it installed with a permit? []Yes []No []Unknown
 37 *If yes, is a certification label issued by the
 38 United States Environmental Protection
 39 Agency (EPA) or the Department of
 40 Environmental Quality (DEQ) affixed to it? []Yes []No []Unknown
 41 *F. Has pest and dry rot, structural or
 42 "whole house" inspection been done
 43 within the last three years? []Yes []No []Unknown
 44 *G. Are there any moisture problems, areas of water
 45 penetration, mildew odors or other moisture

- 1 conditions (especially in the basement)?]Yes]No]Unknown
 2 *If yes, explain on attached sheet the frequency
 3 and extent of problem and any insurance claims,
 4 repairs or remediation done.
- 5 H. Is there a sump pump on the property?]Yes]No]Unknown
 6 I. Are there any materials used in the
 7 construction of the structure that are or
 8 have been the subject of a recall, class
 9 action suit, settlement or litigation?]Yes]No]Unknown
 10 If yes, what are the materials? _____
 11 (1) Are there problems with the materials?]Yes]No]Unknown]NA
 12 (2) Are the materials covered by a warranty?]Yes]No]Unknown]NA
 13 (3) Have the materials been inspected?]Yes]No]Unknown]NA
 14 (4) Have there ever been claims filed for these
 15 materials by you or by previous owners?]Yes]No]Unknown]NA
 16 If yes, when? _____
 17 (5) Was money received?]Yes]No]Unknown]NA
 18 (6) Were any of the materials repaired or
 19 replaced?]Yes]No]Unknown]NA
 20
- 21 6. DWELLING SYSTEMS AND FIXTURES
 22 If the following systems or fixtures are included
 23 in the purchase price, are they in good working
 24 order on the date this form is signed?
- 25 A. Electrical system, including wiring, switches,
 26 outlets and service]Yes]No]Unknown
 27 B. Plumbing system, including pipes, faucets,
 28 fixtures and toilets]Yes]No]Unknown
 29 C. Water heater tank]Yes]No]Unknown
 30 D. Garbage disposal]Yes]No]Unknown]NA
 31 E. Built-in range and oven]Yes]No]Unknown]NA
 32 F. Built-in dishwasher]Yes]No]Unknown]NA
 33 G. Sump pump]Yes]No]Unknown]NA
 34 H. Heating and cooling systems]Yes]No]Unknown]NA
 35 I. Security system]Owned]Leased]Yes]No]Unknown]NA
 36 J. Are there any materials or products used in
 37 the systems and fixtures that are or have
 38 been the subject of a recall, class action
 39 suit settlement or litigation?]Yes]No]Unknown
 40 If yes, what product? _____
 41 (1) Are there problems with the product?]Yes]No]Unknown
 42 (2) Is the product covered by a warranty?]Yes]No]Unknown
 43 (3) Has the product been inspected?]Yes]No]Unknown
 44 (4) Have claims been filed for this product
 45 by you or by previous owners?]Yes]No]Unknown

- 1 If yes, when? _____
- 2 (5) Was money received? []Yes []No []Unknown
- 3 (6) Were any of the materials or products repaired
- 4 or replaced? []Yes []No []Unknown
- 5
- 6 7. COMMON INTEREST
- 7 A. Is there a Home Owners' Association
- 8 or other governing entity? []Yes []No []Unknown
- 9 Name of Association or Other Governing
- 10 Entity _____
- 11 Contact Person _____
- 12 Address _____
- 13 Phone Number _____
- 14 B. Regular periodic assessments: \$_____
- 15 per []Month []Year []Other _____
- 16 *C. Are there any pending or proposed special
- 17 assessments? []Yes []No []Unknown
- 18 D. Are there shared "common areas" or joint
- 19 maintenance agreements for facilities like
- 20 walls, fences, pools, tennis courts, walkways
- 21 or other areas co-owned in undivided interest
- 22 with others? []Yes []No []Unknown
- 23 E. Is the Home Owners' Association or other
- 24 governing entity a party to pending litigation
- 25 or subject to an unsatisfied judgment? []Yes []No []Unknown []NA
- 26 F. Is the property in violation of recorded
- 27 covenants, conditions and restrictions or in
- 28 violation of other bylaws or governing rules,
- 29 whether recorded or not? []Yes []No []Unknown []NA
- 30
- 31 8. SEISMIC
- 32 Was the house constructed before 1974? []Yes []No []Unknown
- 33 If yes, has the house been bolted to its
- 34 foundation? []Yes []No []Unknown
- 35
- 36 9. GENERAL
- 37 A. Are there problems with settling, soil,
- 38 standing water or drainage on the property
- 39 or in the immediate area? []Yes []No []Unknown
- 40 B. Does the property contain fill? []Yes []No []Unknown
- 41 C. Is there any material damage to the property or
- 42 any of the structure(s) from fire, wind, floods,
- 43 beach movements, earthquake, expansive soils
- 44 or landslides? []Yes []No []Unknown
- 45 D. Is the property in a designated floodplain? []Yes []No []Unknown

Note: Flood insurance may be required for homes in a floodplain.

E. Is the property in a designated slide or other geologic hazard zone?]Yes]No]Unknown

*F. Has any portion of the property been tested or treated for asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks or contaminated soil or water?]Yes]No]Unknown

G. Are there any tanks or underground storage tanks (e.g., septic, chemical, fuel, etc.) on the property?]Yes]No]Unknown

H. Has the property ever been used as an illegal drug manufacturing or distribution site?]Yes]No]Unknown

*If yes, was a Certificate of Fitness issued?]Yes]No]Unknown

*I. Has the property been classified as wildland-urban interface?]Yes]No]Unknown

10. FULL DISCLOSURE BY SELLERS

*A. Are there any other material defects affecting this property or its value that a prospective buyer should know about?]Yes]No

*If yes, describe the defect on attached sheet and explain the frequency and extent of the problem and any insurance claims, repairs or remediation.

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy of this disclosure statement. I/we authorize my/our agents to deliver a copy of this disclosure statement to all prospective buyers of the property or their agents.

Seller(s) signature:

SELLER _____ DATE _____

SELLER _____ DATE _____

II. BUYER'S ACKNOWLEDGMENT

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

B. Each buyer acknowledges and understands that the disclosures set forth in this statement and in any amendments to this statement are made only by the seller and are not the representations of

1 any financial institution that may have made or may make a loan pertaining to the property, or that
2 may have or take a security interest in the property, or of any real estate licensee engaged by the
3 seller or buyer. A financial institution or real estate licensee is not bound by and has no liability
4 with respect to any representation, misrepresentation, omission, error or inaccuracy contained in
5 another party's disclosure statement required by this section or any amendment to the disclosure
6 statement.

7

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

11

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

19

20 BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS SELLER'S PROPERTY
21 DISCLOSURE STATEMENT.

22

23 BUYER _____ DATE _____

24

25 BUYER _____ DATE _____

26

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

28

29 _____ Real Estate Licensee

30

31 _____ Real Estate Firm

32

33 Date received by agent _____

34 _____

35

36 _____