

A-Engrossed
House Bill 4046

Ordered by the House February 12
Including House Amendments dated February 12

Sponsored by Representatives KRIEGER, HELM, WITT, Senator ROBLAN; Representative MCLAIN (Pre-session filed.)

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.

Increases damages for unlawful taking or killing of wildlife.

Punishes certain violations of wildlife laws with mandatory revocation of licenses, permits and tags.

Requires civil forfeiture of certain devices upon third conviction within 10-year period for violation of provision of wildlife laws or rule adopted pursuant to wildlife laws.

Requires mandatory minimum incarceration of 180 days upon conviction for violation of wildlife laws or rule adopted pursuant to wildlife laws committed while subject to lifetime prohibition from obtaining licenses, permits and tags.

Expands provisions relating to parts unlawful to be removed from wildlife.

A BILL FOR AN ACT

1
2 Relating to violations of wildlife laws; creating new provisions; and amending ORS 496.705, 496.992
3 and 498.042.

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

5 **SECTION 1.** ORS 496.705 is amended to read:

6 496.705. (1) The State Fish and Wildlife Commission may institute suit for the recovery of dam-
7 ages for the unlawful taking or killing of any of the wildlife referred to in subsection (2) of this
8 section that are the property of the state.

9 (2)(a) The damages referred to in subsection (1) of this section are as follows:

10 (A) Each game mammal other than moose, mountain sheep, mountain goat, elk, **gray wolf, black**
11 **bear, cougar** or silver gray squirrel, or deer or antelope described in subparagraphs (D) and (E) of
12 this paragraph, \$1,000.

13 (B) Each moose, mountain sheep or mountain goat, other than those described in subparagraphs
14 (F), (G) and (H) of this paragraph, \$10,000.

15 (C) Each elk, other than those described in subparagraph (I) of this paragraph, [*\$1,500*] **\$5,000**.

16 (D) Each deer with at least four points on one antler, **gray wolf, black bear or cougar**, \$7,500.

17 (E) Each antelope with at least one horn equal to or greater than 14 inches, \$7,500.

18 (F) Each moose with antlers, [*\$25,000*] **\$50,000**.

19 (G) Each mountain sheep that has at least one horn equal to or greater than one half curl,
20 [*\$25,000*] **\$50,000**.

21 (H) Each mountain goat that has at least one horn equal to or greater than six inches,
22 [*\$25,000*] **\$50,000**.

23 (I) Each elk with at least six points on one antler, \$15,000.

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 (J) Each silver gray squirrel, [\$20] **\$100**.
- 2 (K) Each game bird other than wild turkey **or sage grouse**, \$20.
- 3 (L) Each wild turkey[, \$100] **or sage grouse, \$1,000**.
- 4 (M) Each game fish other than salmon, steelhead trout, halibut or sturgeon, [\$10] **\$25**.
- 5 (N) Each sturgeon other than those specified in subparagraph (O) of this paragraph, salmon,
6 steelhead trout or halibut, [\$250] **\$750**.
- 7 (O) Each oversized sturgeon, as specified by the commission by rule, [\$1,000] **\$5,000**.
- 8 (P) Each fur-bearing mammal other than bobcat or fisher, \$100.
- 9 (Q) Each bobcat or fisher, \$700.
- 10 (R) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the
11 laws of the United States as threatened or endangered, [\$1,000] **\$2,500**.
- 12 (S) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws
13 of the United States, but not otherwise referred to in this subsection, \$50.
- 14 (T) Each bald eagle, golden eagle, goshawk, osprey, peregrine falcon or any other raptor listed
15 as a threatened species or an endangered species by the commission by rule, \$5,000.
- 16 (U) Each raptor except those specified in subparagraph (T) of this paragraph, \$2,000.
- 17 (b) For purposes of this subsection:
- 18 (A) A point must be at least one inch, measured from the main beam of the antler to the tip of
19 the point.
- 20 (B) Horn length must be measured from the base of the hairline to the tip of the horn.
- 21 (3) In any such action, the court shall award to the prevailing party, in addition to costs and
22 disbursements, reasonable attorney fees.
- 23 (4) Such civil damages shall be in addition to other penalties prescribed by the wildlife laws for
24 the unlawful taking or killing of wildlife.
- 25 (5) Any circuit or justice court has jurisdiction to try any case for the recovery of damages for
26 the unlawful taking or killing of any of the wildlife as provided by this section.
- 27 **(6) Each taking or killing of a single animal referred to in subsection (2) of this section**
28 **constitutes a separate unlawful taking or killing for purposes of this section.**
- 29 **(7) Subject to ORS 496.690, this section does not apply to the unintentional taking or**
30 **killing of wildlife incident to an otherwise lawful activity.**
- 31 **SECTION 2.** ORS 496.992 is amended to read:
- 32 496.992. (1) Except as otherwise provided by this section or other law, a violation of any pro-
33 vision of the wildlife laws, or any rule adopted pursuant to the wildlife laws, is a Class A
34 misdemeanor if the offense is committed with a culpable mental state.
- 35 (2) Except as otherwise provided by this section or other law, a violation of a provision of the
36 wildlife laws, or a rule adopted pursuant to the wildlife laws, that does not involve the taking of
37 wildlife is a Class D violation if the offense is committed without a culpable mental state.
- 38 (3) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws,
39 that involves the taking of wildlife, other than nongame mammals and game birds, is a Class A vi-
40 olation if the offense is committed without a culpable mental state.
- 41 (4) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws,
42 that involves the taking of nongame mammals or game birds is a Class C violation if the offense is
43 committed without a culpable mental state.
- 44 (5) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws,
45 that involves the size or quantity limits for salmon, steelhead trout and sturgeon is a Class A vio-

1 lation if the offense is committed without a culpable mental state.

2 (6) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws,
3 relating to the size or quantity limits for fish or shellfish, other than size and quantity limits for
4 salmon, steelhead trout and sturgeon, is a Class C violation if the offense is committed without a
5 culpable mental state.

6 (7) A violation of the nonresident licensing provisions of ORS 497.102 or 497.121 is a Class A
7 violation if the offense is committed without a culpable mental state.

8 (8) A violation of ORS 496.994 is a Class A violation if the offense is committed without a cul-
9 pable mental state.

10 (9) The second and each subsequent conviction within a 10-year period for the taking of a raptor
11 or the taking of game fish with a total value of \$200 or more or the taking of antelope, black bear,
12 cougar, deer, elk, moose, mountain goat or mountain sheep in violation of any provision of the
13 wildlife laws, or any rule adopted pursuant thereto, *[which]* **that** occurs more than one hour prior
14 to, or more than one hour subsequent to, a season established for the lawful taking of such game
15 mammals or game fish is a Class C felony if the offense is committed with a culpable mental state.

16 (10) If a person is convicted of a Class A misdemeanor under subsection (1) of this section, in
17 addition to any other penalty authorized by law, the court shall impose a fine that is:

18 (a) Equal to the maximum fine described in ORS 161.635 (1)(a), if the person has two or more
19 previous convictions for a Class A misdemeanor under subsection (1) of this section or if the offense
20 involves taking three or more times the daily bag limit of any wildlife.

21 (b) Not less than one-half of the maximum fine described in ORS 161.635 (1)(a), if the offense
22 involves:

23 (A) Failing to release a sturgeon more than six feet in length;

24 (B) Unlawfully taking wildlife with the intent to sell, barter, trade, import or export the wildlife,
25 or parts thereof, or selling, bartering, trading, importing or exporting unlawfully taken wildlife, or
26 parts thereof; or

27 (C) Taking a raptor and the person has a previous conviction for taking a raptor.

28 (c) Not less than one-fourth of the maximum fine described in ORS 161.635 (1)(a), if the offense
29 involves taking a raptor and the person does not have a previous conviction for taking a raptor.

30 (11) If more than one minimum fine described in subsection (10) of this section applies, the court
31 shall impose a fine in an amount that is not less than the highest of the applicable minimum fines.

32 **(12)(a) In addition to any other penalty authorized by law, the court shall order the State**
33 **Fish and Wildlife Commission to revoke all licenses, tags and permits issued to a person in**
34 **the manner provided for in ORS 497.415 (3), (5) and (6) if the person is convicted of:**

35 **(A) A Class A misdemeanor under subsection (1) of this section if the offense involves:**

36 **(i) A violation of ORS 498.042; or**

37 **(ii) The unlawful taking of wildlife with the intent to sell, barter, trade, import or export**
38 **the wildlife, or parts thereof, or selling, bartering, trading, importing or exporting unlawfully**
39 **taken wildlife, or parts thereof; or**

40 **(B) A Class C felony under subsection (9) of this section.**

41 **(b) Notwithstanding ORS 497.415 (5), upon having a license, tag or permit revoked under**
42 **subsection (a)(A)(i) of this section for the second time in a 10-year period, a person is pro-**
43 **hibited from applying for or obtaining another such license, tag or permit.**

44 **(13) Upon the third conviction within a 10-year period for violation of a provision of the**
45 **wildlife laws, or a rule adopted pursuant to the wildlife laws, the court shall order all guns,**

1 **boats, vehicles, traps, fishing apparatus, electronic devices and other implements used in**
2 **committing the third or subsequent offense to be seized and forfeited to the State of Oregon,**
3 **to be turned over to the State Fish and Wildlife Commission for disposal in the manner**
4 **provided for in ORS 496.680.**

5 [(12)] (14) As used in this section:

6 (a) "Culpable mental state" has the meaning given that term in ORS 161.085.

7 (b) "Previous conviction" includes a conviction entered in the same sentencing proceeding if the
8 conviction is for a separate criminal episode as defined in ORS 131.505.

9 (c) "Raptor" means a member of the order Falconiformes or Strigiformes and includes owls,
10 hawks, falcons, eagles, osprey and harriers.

11 **SECTION 3.** ORS 498.042 is amended to read:

12 498.042. [(1) *No person shall remove from the carcass of any game mammal or game bird, the head,*
13 *antlers, horns, hide or plumage, and utilize only those parts so removed, except:*]

14 (1) **Except as provided in subsection (2) of this section, a person may not remove the**
15 **following parts from the carcass of any wildlife and utilize only those parts so removed:**

16 (a) **From the carcass of any game mammal or game bird, the head, antlers, horns, hide**
17 **or plumage.**

18 (b) **From the carcass of a black bear or cougar, the paws, gallbladder, sex organs or**
19 **bones.**

20 (c) **From the carcass of a sturgeon, salmon or steelhead, the eggs.**

21 (2) **Subsection (1) of this section does not apply to the removal of wildlife parts by a**
22 **person:**

23 (a) When engaged in lawful trapping activities.

24 (b) When utilizing those game mammals or game birds that the State Fish and Wildlife Com-
25 mission by rule declares to be inedible.

26 [(2)] (3) No person shall waste any edible portion of any game mammal, game bird or game fish
27 or the pelt of any fur-bearing mammal.

28 **SECTION 4.** Section 5 of this 2016 Act is added to and made a part of the wildlife laws.

29 **SECTION 5.** A person shall be sentenced to a mandatory minimum term of incarceration
30 of 180 days, without reduction for any reason, if:

31 (1) **The person is convicted of a violation of the wildlife laws, or any rule adopted pursu-**
32 **ant to the wildlife laws, or a failure to comply with the requirements of a citation in con-**
33 **nection with any such offense; and**

34 (2) **At the time of conviction, the person is subject to a prohibition by a court or the**
35 **State Fish and Wildlife Commission under ORS 496.992 (12) or 497.415 from applying for or**
36 **obtaining all licenses, tags or permits issued pursuant to the wildlife laws.**

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