

Enrolled Senate Bill 105

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CHAPTER

AN ACT

Relating to penalties for environmental laws; creating new provisions; and amending ORS 459.995, 465.900, 466.990, 466.992, 466.994, 466.995, 468.130, 468.140, 468.922, 468.929, 468.936, 468.996 and 783.992.

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

SECTION 1. ORS 459.995 is amended to read:

459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty provided by law:

(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080, or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid mercury, shall incur a civil penalty not to exceed [~~\$10,000~~] **\$25,000** a day for each day of the violation.

(b) Any person who violates the provisions of ORS 459.420 to 459.426 shall incur a civil penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly shall be a separate violation. Each day an establishment fails to post the notice required under ORS 459.426 shall be a separate violation.

(c) For each day a city, county or metropolitan service district fails to provide the opportunity to recycle as required under ORS 459A.005, the city, county or metropolitan service district shall incur a civil penalty not to exceed \$500 for each violation.

(2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to 459A.665 shall incur a civil penalty not to exceed \$1,000 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 shall not be subject to additional penalties under subsection (1) of this section.

(3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the manner provided by ORS 468.135.

SECTION 2. ORS 459.995, as amended by section 17, chapter 302, Oregon Laws 2007, is amended to read:

459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty provided by law:

(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080, or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid mercury, shall incur a civil penalty not to exceed [~~\$10,000~~] **\$25,000** a day for each day of the violation.

(b) Any person who violates the provisions of ORS 459.420 to 459.426 shall incur a civil penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly shall be a separate violation. Each day an establishment fails to post the notice required under ORS 459.426 shall be a separate violation.

(c) For each day a city, county or metropolitan service district fails to provide the opportunity to recycle as required under ORS 459A.005, the city, county or metropolitan service district shall incur a civil penalty not to exceed \$500 for each violation.

(d) Any person who violates the provisions of ORS 459.247 (1)(f) shall incur a civil penalty not to exceed \$500 for each violation. Each covered electronic device that is disposed of improperly shall be a separate violation.

(2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to 459A.665 shall incur a civil penalty not to exceed \$1,000 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 shall not be subject to additional penalties under subsection (1) of this section.

(3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the manner provided by ORS 468.135.

SECTION 3. ORS 465.900 is amended to read:

465.900. (1) In addition to any other penalty provided by law, any person who violates a provision of ORS 465.200 to 465.545, or any rule or order entered or adopted under ORS 465.200 to 465.545, shall incur a civil penalty not to exceed [~~\$10,000~~] **\$25,000** a day for each day that such violation occurs or that failure to comply continues.

(2) The civil penalty authorized by subsection (1) of this section shall be imposed in the manner provided by ORS 468.135, except that a penalty collected under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 465.381, if the penalty pertains to a release at any facility.

SECTION 4. ORS 466.990 is amended to read:

466.990. (1) In addition to any other penalty provided by law, any person who violates ORS 466.005 to 466.385 and 466.992, a license condition or any Environmental Quality Commission rule or **any order of the commission or Department of Environmental Quality** pertaining to the generation, treatment, storage, disposal or transportation by air or water of hazardous waste, as defined by ORS 466.005, shall incur a civil penalty not to exceed [~~\$10,000~~] **\$25,000** for each day of the violation.

(2) The civil penalty authorized by subsection (1) of this section shall be imposed in the manner provided by ORS 468.135.

(3) In addition to any other penalty provided by law, any person who violates a provision of ORS 466.605 to 466.680, or any rule or order entered or adopted under ORS 466.605 to 466.680, [~~may~~] **shall** incur a civil penalty not to exceed [~~\$10,000~~] **\$25,000**. Each day of violation shall be considered a separate offense.

(4) The civil penalty authorized by subsection (3) of this section shall be imposed in the manner provided by ORS 468.135, except that a penalty collected under this section shall be deposited to the fund established in ORS 466.670.

SECTION 5. ORS 466.992 is amended to read:

466.992. (1) Any person who has care, custody or control of a hazardous waste or a substance [~~which~~] **that** would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in [~~subsection (2) of this~~]

section] **ORS 496.705** for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in [subsection (2) of this section] **ORS 496.705** that are the property of the state.

[(2) The penalties referred to in subsection (1) of this section shall be as follows:]

[(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, \$400.]

[(b) Each mountain sheep or mountain goat, \$3,500.]

[(c) Each elk, \$750.]

[(d) Each silver gray squirrel, \$10.]

[(e) Each game bird other than wild turkey, \$10.]

[(f) Each wild turkey, \$50.]

[(g) Each game fish other than salmon or steelhead trout, \$5.]

[(h) Each salmon or steelhead trout, \$125.]

[(i) Each fur-bearing mammal other than bobcat or fisher, \$50.]

[(j) Each bobcat or fisher, \$350.]

[(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, \$500.]

[(L) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this subsection, \$25.]

[(3)] (2) The civil penalty imposed under this section shall be in addition to other penalties prescribed by law.

SECTION 6. ORS 466.994 is amended to read:

466.994. (1) Any person who violates any provision of ORS 466.706 to 466.882 and this section, a rule adopted under ORS 466.706 to 466.882 and this section or the terms or conditions of any order or permit issued by the Department of Environmental Quality under ORS 466.706 to 466.882 and this section shall be subject to a civil penalty not to exceed [~~\$10,000~~] **\$25,000** per violation per day of violation.

(2) Each violation may be a separate and distinct offense and in the case of a continuing violation, each day's continuance thereof may be deemed a separate and distinct offense.

(3) The civil penalties authorized under this section shall be imposed in the manner provided by ORS 468.135 except that a penalty collected under subsection (1) of this section shall be deposited to the fund established in ORS 466.791.

SECTION 7. ORS 466.995 is amended to read:

466.995. (1) Penalties provided in this section are in addition to and not in lieu of any other remedy specified in ORS 459.005 to 459.105, 459.205 to 459.385, 466.005 to 466.385 or 466.992.

(2) Subject to ORS 153.022, violation **by any person** of a provision of ORS 466.605 to 466.680 or of any rule or order entered or adopted under ORS 466.605 to 466.680 is punishable, upon conviction, by a fine of not more than [~~\$10,000~~] **\$25,000** or by imprisonment in the county jail for not more than one year or both. Each day of violation shall be considered a separate offense.

(3) Subject to ORS 153.022, any person who knowingly violates any provision of ORS 466.706 to 466.882 and 466.994 or the rules adopted under ORS 466.706 to 466.882 and 466.994 shall be subject to a criminal penalty not to exceed [~~\$10,000~~] **\$25,000** or imprisonment for not more than one year or both. Each day of violation shall be deemed a separate offense.

(4) Subject to ORS 153.022, any person who knowingly violates any provision of ORS 465.200 to 465.545 or any rule or order adopted or issued under ORS 465.200 to 465.545 shall, upon conviction, be subject to a criminal penalty not to exceed [~~\$10,000~~] **\$25,000** or imprisonment for not more than one year, or both. Each day of violation shall be deemed a separate offense.

(5) Notwithstanding ORS 161.655, if a person incurring a fine under this section is a corporation, the corporation shall pay the fine provided for under this section.

SECTION 8. ORS 468.130 is amended to read:

468.130. (1) The Environmental Quality Commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as

provided in ORS 468.140 (3), no civil penalty shall exceed [~~\$10,000~~] **\$25,000** per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits [*pertaining to water or air pollution or air contamination or solid waste disposal*] **enforceable by the commission or by regional air quality control authorities.**

(c) The economic and financial conditions of the person incurring a penalty.

(d) The gravity and magnitude of the violation.

(e) Whether the violation was repeated or continuous.

(f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(g) The violator's cooperativeness and efforts to correct the violation.

(h) Whether the violator gained an economic benefit as a result of the violation.

[*h*] (i) Any relevant rule of the commission.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.

(4) The commission may by rule delegate to the Department of Environmental Quality, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties.

SECTION 9. ORS 468.140 is amended to read:

468.140. (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the Department of Environmental Quality or a regional air quality control authority.

(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755[,] **and 783.625 to 783.640** and ORS chapter 467 and ORS chapters 468, 468A and 468B.

(c) Any rule or standard or order of the Environmental Quality Commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755[,] **and 783.625 to 783.640** and ORS chapter 467 and ORS chapters 468, 468A and 468B.

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468A.135.

(f) The financial assurance requirement under ORS 468B.390 and 468B.485 or any rule related to the financial assurance requirement under ORS 468B.390.

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil **or hazardous material** into the waters of the state **or intentionally or negligently fails to clean up a spill or release of oil or hazardous material into the waters of the state as required by ORS 466.645** shall incur a civil penalty not to exceed the amount of [~~\$20,000~~] **\$100,000** for each violation.

(b) In addition to any other penalty provided by law, the following persons shall incur a civil penalty not to exceed the amount of [~~\$10,000~~] **\$25,000** for each day of violation:

(A) Any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state.

(B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and **783.625 to 783.640** and ORS chapters 468, 468A and 468B relating to air or water pollution.

(C) Any person who violates the provisions of a rule adopted or an order issued under ORS 459A.590.

(4) In addition to any other penalty provided by law, any person who violates the provisions of ORS 468B.130 shall incur a civil penalty not to exceed the amount of [~~\$500~~] **\$1,000** for each day of violation.

(5) Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned. Any fines collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. As used in this subsection, "open field burning" does not include propane flaming of mint stubble.

SECTION 10. Section 10 of this 2009 Act is added to and made a part of ORS 468.922 to 468.956.

SECTION 11. ORS 161.655 does not apply to offenses specified in ORS 468.922 to 468.956.

SECTION 12. ORS 468.922 is amended to read:

468.922. (1) A person commits the crime of unlawful disposal, storage or treatment of hazardous waste in the second degree if the person, in violation of ORS 466.095 or 466.100 or any rule, standard, license, permit or order adopted or issued under ORS 466.020, 466.095 or 466.100, knowingly treats, stores or disposes of hazardous waste.

(2)(a) Subject to ORS 153.022, unlawful disposal, storage or treatment of hazardous waste in the second degree is a Class B misdemeanor.

(b) Notwithstanding ORS 161.635, in addition to any term of imprisonment that the court may impose under paragraph (a) of this subsection, the court may impose a fine of up to [~~\$10,000~~] **\$25,000**.

SECTION 13. ORS 468.929 is amended to read:

468.929. (1) A person commits the crime of unlawful transport of hazardous waste in the second degree if the person, in violation of ORS 466.080, 824.090 or 825.258 or any rule, standard, license, permit or order adopted or issued under ORS 466.020, 466.080, 824.090 or 825.258, knowingly transports hazardous waste.

(2)(a) Subject to ORS 153.022, unlawful transport of hazardous waste in the second degree is a Class B misdemeanor.

(b) Notwithstanding ORS 161.635, in addition to any term of imprisonment that the court may impose under paragraph (a) of this subsection, the court may impose a fine of up to [~~\$10,000~~] **\$25,000**.

SECTION 14. ORS 468.936 is amended to read:

468.936. (1) A person commits the crime of unlawful air pollution in the second degree if the person knowingly violates any applicable requirement of ORS chapter 468A or a permit, rule or order adopted or issued under ORS chapter 468A.

(2) Notwithstanding ORS 161.515 and subject to ORS 153.022, unlawful air pollution in the second degree is a criminal offense punishable solely by a fine of up to [~~\$10,000~~] **\$25,000**.

SECTION 15. ORS 468.996 is amended to read:

468.996. (1) In addition to any other penalty provided by law, any person who intentionally or recklessly violates any provision of ORS 164.785, 459.205 to 459.426, 459.705 to 459.790, ORS chapters 465, 466 or 467 or 468, 468A and 468B or any rule or standard or order of the Environmental Quality Commission adopted or issued pursuant to ORS 459.205 to 459.426, 459.705 to 459.790, ORS chapters

465, 466 or 467 or 468, 468A and 468B, which results in or creates the imminent likelihood for an extreme hazard to the public health or which causes extensive damage to the environment shall incur a civil penalty not to exceed [~~\$100,000~~] **\$250,000**. The Environmental Quality Commission shall adopt by rule a schedule and the criteria for determining the amount of a civil penalty that may be imposed for an extreme violation.

(2) As used in this section:

(a) "Intentionally" means conduct by a person with a conscious objective to cause the result of the conduct.

(b) "Recklessly" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

SECTION 16. ORS 783.992 is amended to read:

783.992. [(1) *Except as provided in subsection (2) of this section,*] **As specified in ORS 468.140,** the Director of the Department of Environmental Quality may impose a civil penalty on the owner or operator of a vessel for failure to comply with the requirements of ORS 783.625 to 783.640. [*The penalty imposed under this section may not exceed \$5,000 for each violation. In determining the penalty imposed, the director shall consider whether the violation was intentional, negligent or without any fault and shall consider the quality and nature of risks created by the violation. The owner or operator of a vessel subject to such a penalty may contest the determination by requesting a hearing under ORS 183.413 to 183.470.*]

[(2) *The civil penalty for a violation of the reporting requirements of ORS 783.640 may not exceed \$500 per violation.*]

SECTION 17. Except as provided in section 18 of this 2009 Act, section 11 of this 2009 Act and the amendments to ORS 459.995, 465.900, 466.990, 466.992, 466.994, 466.995, 468.130, 468.140, 468.922, 468.929, 468.936, 468.996 and 783.992 by sections 1 to 9 and 12 to 16 of this 2009 Act become operative on January 1, 2011.

SECTION 18. The Environmental Quality Commission may adopt rules before the operative date specified in section 17 of this 2009 Act or take any action before that date that is necessary to carry out section 11 of this 2009 Act and the amendments to ORS 459.995, 465.900, 466.990, 466.992, 466.994, 466.995, 468.130, 468.140, 468.922, 468.929, 468.936, 468.996 and 783.992 by sections 1 to 9 and 12 to 16 of this 2009 Act.

SECTION 19. Section 11 of this 2009 Act and the amendments to ORS 459.995, 465.900, 466.990, 466.992, 466.994, 466.995, 468.130, 468.140, 468.922, 468.929, 468.936, 468.996 and 783.992 by sections 1 to 9 and 12 to 16 of this 2009 Act apply to violations occurring on or after the operative date specified in section 17 of this 2009 Act.

Passed by Senate April 13, 2009

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Secretary of Senate

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President of Senate

Passed by House May 26, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State