

Enrolled
House Bill 2576

Sponsored by Representative RAYFIELD (Presession filed.)

CHAPTER

AN ACT

Relating to exceptions to wildlife trafficking prevention program; creating new provisions; amending ORS 498.022; and declaring an emergency.

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

SECTION 1. ORS 498.022, as amended by section 2, chapter 3, Oregon Laws 2017 (Ballot Measure 100), is amended to read:

498.022. (1) Except as the State Fish and Wildlife Commission by rule may provide otherwise, *[but subject to subsection (2) below, no person shall]* **but subject to subsection (2) of this section, a person may not** purchase, sell or exchange, or offer to purchase, sell or exchange any wildlife, or any part *[thereof]* **of any wildlife.**

[(2) Wildlife Trafficking Prevention.]

[(a)] **(2)(a)** Except as provided in *[subsection (2)(b) of this section]* **paragraphs (b) and (c) of this subsection**, and notwithstanding any other provision of law, or rule enacted pursuant to subsection (1) of this section, a person *[shall]* **may** not purchase, sell, offer for sale[,] or possess with intent to sell[,] any item that the person knows or should know is a covered animal species part or product.

(b) *[Subsection (2)(a) of this section shall]* **This subsection does** not apply:

(A) To employees or agents of the federal or state government undertaking any law enforcement activities pursuant to federal or state law or any mandatory duties required by federal or state law;

(B) When the activity is expressly authorized by federal law;

(C) When the activity involves a species that is subject to a federal management plan under Title III of P.L. 94-265 (16 U.S.C. [§§ 1851-1869] **1851 to 1869**), as amended;

(D) When the activity is *[exempted by]* **exempt under** ORS 498.257 (3) or *[ORS]* 509.160 (3);

(E) When the covered animal species part or product is a fixed component of an antique that is not made wholly or primarily of the covered animal species part or product, provided that the antique status is established by the owner or seller *[thereof]* **of the antique** with documentation evidencing provenance and showing the covered animal species part or product to be not less than *[one hundred]* **100** years old[,] and provided that the total weight of the covered animal species part or product is less than 200 grams;

(F) When the covered animal species part or product is a fixed component of a musical instrument, including, but not limited to, string instruments and bows, wind and percussion instruments[,] and pianos, provided that the covered animal species part or product was legally acquired and provided that the total weight of the covered animal species part or product is less than 200 grams;

(G) To the noncommercial transfer of ownership of a covered animal species part or product to a legal beneficiary of an estate, trust[,] or other inheritance;

[(H) To the donation of a covered animal species part or product to a bona fide scientific or educational institution for scientific or educational purposes; or]

[(I) (H) To the possession of a covered animal species part or product by any enrolled member of a [federally-recognized] federally recognized Indian tribe[.]; or

(I) To the sale of a covered animal species part or product by or to a bona fide scientific or educational institution when the sale is made pursuant to a written gift agreement or similar instrument entered into before July 1, 2017.

(c)(A) Unless otherwise prohibited by federal law, the State Department of Fish and Wildlife may permit the purchase, sale or donation of a lawfully acquired covered animal species part or product by or to a bona fide scientific or educational institution for scientific or educational purposes on or after July 1, 2017.

(B) For each covered animal species part or product that is purchased, sold or donated under this paragraph, the bona fide scientific or educational institution shall:

(i) Keep documentation from the transaction detailing the type of part or product acquired and the source of the part or product; and

(ii) Provide the department with a copy of the documentation described in sub-subparagraph (i) of this subparagraph.

[(c)] (d) There is a presumption of possession with intent to sell a covered animal species part or product when the part or product is possessed by a retail or wholesale establishment or other forum engaged in the business of buying or selling of similar items. This rebuttable presumption [shall] does not preclude a finding of intent to sell based on any other evidence [which] that may serve to independently establish such intent.

[(d)] (e) Each violation of [subsection (2) of this section shall be] this subsection is punishable by a civil penalty not to exceed \$6,500 or an amount equal to two times the total value of the covered animal species part or product that is the subject of the violation, whichever is higher. The civil penalty authorized by this [subsection] paragraph shall be imposed in the manner provided by ORS 183.745.

[(e)] (f) Any covered animal species part or product that is subject to seizure by or forfeiture to the [Oregon] department [of Fish and Wildlife shall] may not be sold by the department.

[(f)] (g) The [Oregon Fish and Wildlife] commission may adopt rules necessary for the implementation of [subsection (2) of this section] this subsection, including rules restricting the purchase, sale, offer for sale[,] or possession with intent to sell[,] of parts or products of any animal species that so closely resemble in appearance parts or products of a covered animal species that law enforcement personnel would have substantial difficulty in attempting to differentiate between the species.

[(g)] (h) As used in [subsection (2) of this section] this subsection:

(A) “Bona fide scientific or educational institution” means:

(i) A career school granted authority to operate under ORS 345.010 to 345.450;

(ii) A community college established under ORS chapter 341;

(iii) An education service district as defined in ORS 334.003;

(iv) The Oregon Health and Science University;

(v) A public high school;

(vi) A public university listed in ORS 352.002;

(vii) Any institution not otherwise listed in this subparagraph that is exempt from ORS 348.594 to 348.615 under ORS 348.597 (2); or

(viii) A zoo or aquarium that is accredited under standards that equal or exceed the accreditation standards of the Association of Zoos and Aquariums in effect on the effective date of this 2017 Act.

[(A)] (B) “Covered animal species” means any species of:

(i) Elephant;

(ii) Rhinoceros;

(iii) Whale;

- (iv) Tiger;
- (v) Lion;
- (vi) Leopard;
- (vii) Cheetah;
- (viii) Jaguar;
- (ix) Pangolin;
- (x) Sea Turtle;
- (xi) Shark (excluding spiny dogfish as defined in ORS 498.257 [(1)]); or
- (xii) Ray.

[(B)] (C) "Covered animal species part or product" means any item that contains, or is wholly or partially made from, any covered animal species.

[(C)] (D) "Person" means any individual, firm, partnership, joint venture, corporation, limited liability company, joint stock company, estate, trust, receiver, syndicate, association[,] or other legal entity.

[(D)] (E) "Sale" or "sell" means any act of selling, trading[,] or bartering for monetary or non-monetary consideration[,] and includes any transfer of ownership that occurs in the course of a commercial transaction, but does not include a nonmonetary transfer of ownership by way of gift, donation[,] or bequest.

[(E)] (F) "Total value" means either the fair market value or the actual price paid for a covered animal species part or product, whichever is greater.

SECTION 2. The amendments to ORS 498.022 by section 1 of this 2017 Act become operative on July 1, 2017.

SECTION 3. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by House April 3, 2017

Received by Governor:

Repassed by House May 10, 2017

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Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2017

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate May 8, 2017

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

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Dennis Richardson, Secretary of State