

House Bill 3429

Sponsored by Representatives ESQUIVEL, SMITH DB

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**.

Clarifies definition of "covered animal species" for purposes of wildlife trafficking prevention program.

Makes conforming changes.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to wildlife trafficking prevention program; creating new provisions; amending ORS 498.022;
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 498.022, as amended by section 2, chapter 3, Oregon Laws 2017, is amended
6 to read:

7 498.022. (1) Except as the State Fish and Wildlife Commission by rule may provide otherwise,
8 *[but subject to subsection (2) below, no person shall]* **but subject to subsection (2) of this section,**
9 **a person may not** purchase, sell or exchange, or offer to purchase, sell or exchange any wildlife,
10 or any part *[thereof]* **of any wildlife.**

11 *[(2) Wildlife Trafficking Prevention.]*

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

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

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

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

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

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

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

29 (F) When the covered animal species part or product is a fixed component of a musical instru-
30 ment, including, but not limited to, string instruments and bows, wind and percussion

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 instruments[,] and pianos, provided that the covered animal species part or product was legally ac-
 2 quired and provided that the total weight of the covered animal species part or product is less than
 3 200 grams;

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

6 (H) To the donation of a covered animal species part or product to a bona fide scientific or ed-
 7 ucational institution for scientific or educational purposes; or

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

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

15 (d) Each violation of [*subsection (2) of this section shall be*] **this subsection is** punishable by a
 16 civil penalty not to exceed \$6,500 or an amount equal to two times the total value of the covered
 17 animal species part or product that is the subject of the violation, whichever is higher. The civil
 18 penalty authorized by this [*subsection*] **paragraph** shall be imposed in the manner provided by ORS
 19 183.745.

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

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

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

28 (A) "Covered animal species" means any species of **the following that are listed in Appendix**
 29 **I or Appendix II of the Convention on International Trade in Endangered Species of Wild**
 30 **Fauna and Flora or that are listed as vulnerable, endangered, critically endangered, extinct**
 31 **in the wild or extinct on the International Union for Conservation of Nature Red List of**
 32 **Threatened Species**:

33 (i) Elephant;

34 (ii) Rhinoceros;

35 (iii) Whale;

36 (iv) Tiger;

37 (v) Lion;

38 (vi) Leopard;

39 (vii) Cheetah;

40 (viii) Jaguar;

41 (ix) Pangolin;

42 (x) Sea Turtle;

43 (xi) Shark (excluding spiny dogfish as defined in ORS 498.257 [(1)]); or

44 (xii) Ray.

45 (B) "Covered animal species part or product" means any item that contains, or is wholly or

1 partially made from, any covered animal species.

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

4 (D) "Sale" or "sell" means any act of selling, trading[,] or bartering for monetary or nonmone-
5 tary consideration[,] and includes any transfer of ownership that occurs in the course of a commer-
6 cial transaction, but does not include a nonmonetary transfer of ownership by way of gift,
7 donation[,] or bequest.

8 (E) "Total value" means either the fair market value or the actual price paid for a covered an-
9 imal species part or product, whichever is greater.

10 **SECTION 2. The amendments to ORS 498.022 by section 1 of this 2017 Act become oper-**
11 **ative on July 1, 2017.**

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

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