

HB 4030 -3 STAFF MEASURE SUMMARY

House Committee On Agriculture and Natural Resources

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 2/6

WHAT THE MEASURE DOES:

Allows courts to impose a misdemeanor fine under ORS 161.635 or a compensatory fine not exceeding the damages under ORS 496.705(2), in addition to incarceration, if a person is convicted of misdemeanor for unlawful taking or killing of wildlife on or after January 1, 2019. Requires compensatory fines be made payable to the Oregon Fish and Wildlife Commission (OFWC). Reduces amount recoverable as damages for offense by amount of compensatory fine imposed for offense. Prohibits person from obtaining a license, tag or permit if a compensatory fine has not been paid.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-3 Replaces section one of the measure. Allows court to order defendant to pay a portion of the penalty for unlawful taking or killing of wildlife listed under ORS 496.705 (2) as a separate compensatory fine to be paid to the court clerk. Requires clerk to pay the amount of the compensatory fine to the OFWC. Allows court to impose a fine greater than the maximum fine specified for violation, misdemeanor, and felony offenses if the maximum amount recoverable under ORS 496.705 (2) is greater than the maximum fine specified for violation, misdemeanor, and felony offenses. Requires court to order the portion of the imposed fine that is greater than the maximum fine specified for violation, misdemeanor, and felony offenses be paid as a compensatory fine. Prohibits compensatory fine from exceeding maximum damages amount specified under ORS 496.705 (2) for the unlawful taking or killing. Requires that amount recoverable under ORS 496.705 (2) be reduced by any compensatory fine that a court imposes.

BACKGROUND:

In 2016, the Legislature enacted House Bill 4046, which increased damages for unlawful taking or killing of wildlife. Under ORS 496.705 (2), recoverable damages are listed for moose, mountain sheep, mountain goat, elk, deer, gray wolf, black bear, cougar, antelope, silver gray squirrel, other game mammal, wild turkey, sage grouse, other game bird, sturgeon, salmon, steelhead trout or halibut, other game fish, bobcat, fisher, other fur-bearing mammals, bald eagle, golden eagle, goshawk, osprey, peregrine falcon, and any threatened or endangered species. The law allows the Oregon Fish and Wildlife Commission to institute suit for the recovery of civil damages for the unlawful taking or killing of any of the listed wildlife.

Since the passage of House Bill 4046, a judge in Gilliam County found two men guilty of unlawfully possessing bighorn sheep in 2017, but ultimately denied the State's request for a restitution award. The judge found that the civil damages provided in ORS 496.705 (2) for unlawfully taking wildlife do not constitute "economic damages" necessary for purposes of restitution in criminal cases. This verdict was supported by a subsequent Court of Appeals case (*State v. Shockey*).