

A-Engrossed
House Bill 4030

Ordered by the House February 19
Including House Amendments dated February 19

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Agriculture and Natural Resources for Representative Ken Helm)

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.

[Provides that for misdemeanor under wildlife laws that involves taking or killing of wildlife, in addition to any term of incarceration imposed, court may impose applicable fine for misdemeanor or impose compensatory fine payable to State Fish and Wildlife Commission. Reduces amount recoverable as damages for offense by amount of compensatory fine imposed for offense. Makes failure to pay fine grounds for denying license, tag or permit.]

Provides that, for offense under wildlife laws involving unlawful taking or killing of wildlife for which State Fish and Wildlife Commission may recover damages, court may order that part of fine be paid over to commission. Allows higher maximum fine for offense if damages recoverable for unlawful killing or taking exceed statutory maximum fine for offense. Reduces amount of damages recoverable for unlawful taking or killing by fine amount paid over to commission. Makes failure to pay ordered amount to commission grounds for denying license, tag or permit.

A BILL FOR AN ACT

1
2 Relating to violations of the wildlife laws; creating new provisions; and amending ORS 496.992 and
3 497.400.

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

5 **SECTION 1.** ORS 496.992 is amended to read:

6 496.992. (1) Except as otherwise provided by this section or other law, a violation of any pro-
7 vision of the wildlife laws, or any rule adopted pursuant to the wildlife laws, is a Class A
8 misdemeanor if the offense is committed with a culpable mental state.

9 (2) Except as otherwise provided by this section or other law, a violation of a provision of the
10 wildlife laws, or a rule adopted pursuant to the wildlife laws, that does not involve the taking of
11 wildlife is a Class D violation if the offense is committed without a culpable mental state.

12 (3) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws,
13 that involves the taking of wildlife, other than nongame mammals and game birds, is a Class A vi-
14 olation if the offense is committed without a culpable mental state.

15 (4) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws,
16 that involves the taking of nongame mammals or game birds is a Class C violation if the offense is
17 committed without a culpable mental state.

18 (5) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws,
19 that involves the size or quantity limits for salmon, steelhead trout and sturgeon is a Class A vi-
20 olation if the offense is committed without a culpable mental state.

21 (6) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws,
22 relating to the size or quantity limits for fish or shellfish, other than size and quantity limits for

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 salmon, steelhead trout and sturgeon, is a Class C violation if the offense is committed without a
2 culpable mental state.

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

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

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

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

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

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

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

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

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

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

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

29 **(12)(a) If a court imposes a fine as penalty for an offense under the wildlife laws that**
30 **involves the unlawful taking or killing of wildlife listed under ORS 496.705 (2), the court shall**
31 **order that the defendant pay all or a portion of the fine separately to the clerk of the court**
32 **for paying over to the State Fish and Wildlife Commission. The clerk shall pay over to the**
33 **commission the amount that the court ordered the defendant to pay separately for that**
34 **purpose. The amount that the court orders to be paid separately to the clerk for paying over**
35 **to the commission shall be the lesser of:**

36 **(A) The amount of the fine imposed; or**

37 **(B) The amount that the commission could recover under ORS 496.705 (2) as damages for**
38 **the unlawful taking or killing.**

39 **(b) If the amount that the commission could recover under ORS 496.705 (2) as damages**
40 **for the unlawful taking or killing of wildlife is more than the maximum fine established for**
41 **the offense under ORS 153.018, 161.625 or 161.635 or a specific fine statute, notwithstanding**
42 **ORS 153.018, 161.625 or 161.635 or any specific fine statute, the maximum fine for the offense**
43 **is the amount that the commission could recover under ORS 496.705 (2) as damages for the**
44 **unlawful taking or killing.**

45 **(c) If an amount paid over to the commission under this subsection is less than the**

1 **amount that the commission could recover under ORS 496.705 (2) as damages for the un-**
2 **lawful taking or killing of wildlife, payment of the amount does not prevent the commission**
3 **from bringing an action under ORS 496.705 (2) to recover damages for the unlawful taking**
4 **or killing. However, notwithstanding ORS 496.705, the amount recoverable under ORS 496.705**
5 **(2) by the commission as damages for the unlawful taking or killing shall be reduced by the**
6 **amount paid to the commission under this subsection from a fine imposed for the unlawful**
7 **taking or killing.**

8 [(12)(a)] (13)(a) In addition to any other penalty authorized by law, the court shall order the
9 State Fish and Wildlife Commission to revoke all licenses, tags and permits issued to a person in the
10 manner provided for in ORS 497.415 (3), (5) and (6) if the person is convicted of:

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

12 (i) A violation of ORS 498.042; or

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

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

17 (b) Notwithstanding ORS 497.415 (5), upon having a license, tag or permit revoked under para-
18 graph (a)(A)(i) of this subsection for the second time in a 10-year period, a person is prohibited from
19 applying for or obtaining another such license, tag or permit.

20 [(13)] (14) Upon the third conviction within a 10-year period for violation of a provision of the
21 wildlife laws, or a rule adopted pursuant to the wildlife laws, the court shall order all guns, boats,
22 vehicles, traps, fishing apparatus, electronic devices and other implements used in committing the
23 third or subsequent offense to be seized and forfeited to the State of Oregon, to be turned over to
24 the State Fish and Wildlife Commission for disposal in the manner provided for in ORS 496.680.

25 [(14)] (15) As used in this section:

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

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

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

31 **SECTION 2.** ORS 497.400 is amended to read:

32 497.400. No person shall:

33 (1) Apply for, obtain or possess for personal use or for the use of any other person more licenses,
34 tags or permits issued by the State Fish and Wildlife Commission than are authorized for personal
35 use during the current year by the wildlife laws and rules promulgated pursuant thereto.

36 (2) Alter, borrow, loan or transfer to another person any license, tag or permit issued by the
37 commission.

38 (3) In applying for a license, tag or permit issued by the commission, knowingly make any false
39 statement of any information required by the application regarding the person in whose name the
40 license, tag or permit is to be issued.

41 (4) Possess any license, tag or permit that has been altered, borrowed, loaned or transferred or
42 for which any false statements were knowingly made in applying therefor.

43 (5) Apply for or obtain any license, tag or permit issued by the commission when civil damages
44 due pursuant to ORS 496.705, [or when] moneys due the State Department of Fish and Wildlife from
45 court-ordered restitutions for violations of the wildlife laws **or moneys due the commission under**

1 **ORS 496.992 (12)** have not been paid.

2 **SECTION 3. The amendments to ORS 496.992 by section 1 of this 2018 Act apply to of-**
3 **fenses under the wildlife laws committed on or after the effective date of this 2018 Act.**

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