

Senate Bill 404

Sponsored by Senator BENTZ (at the request of Laura Leighton and Brad Wall) (Pre-session filed.)

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**.

Increases penalty for second conviction of unlawful taking of game mammal within two-year period if offense is committed with culpable mental state. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

A BILL FOR AN ACT

1
2 Relating to penalties for the unlawful taking of game mammals; amending ORS 496.992.

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

4 **SECTION 1.** ORS 496.992, as amended by section 1, chapter 14, Oregon Laws 2018, is amended
5 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
23 salmon, steelhead trout and sturgeon, is a Class C violation if the offense is committed without a
24 culpable mental state.

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

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

29 (9) The second and each subsequent conviction within a 10-year period for the taking of a raptor
30 or the taking of game fish with a total value of \$200 or more [*or the taking of antelope, black bear,*
31 *cougar, deer, elk, moose, mountain goat or mountain sheep*] in violation of any provision of the wildlife

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 laws, or any rule adopted pursuant thereto, that occurs more than one hour prior to, or more than
 2 one hour subsequent to, a season established for the lawful taking of [*such game mammals or*] game
 3 fish is a Class C felony if the offense is committed with a culpable mental state.

4 **(10) The second and each subsequent conviction within a two-year period for the taking**
 5 **of a game mammal in violation of any provision of the wildlife laws, or any rule adopted**
 6 **pursuant to the wildlife laws, is a Class C felony if the offense is committed with a culpable**
 7 **mental state.**

8 [(10)] (11) If a person is convicted of a Class A misdemeanor under subsection (1) of this section,
 9 in addition to any other penalty authorized by law, the court shall impose a fine that is:

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

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

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

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

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

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

22 [(11)] (12) If more than one minimum fine described in subsection [(10)] (11) of this section ap-
 23 plies, the court shall impose a fine in an amount that is not less than the highest of the applicable
 24 minimum fines.

25 [(12)(a)] (13)(a) If a court imposes a fine as penalty for an offense under the wildlife laws that
 26 involves the unlawful taking or killing of wildlife listed under ORS 496.705 (2), the court shall order
 27 that the defendant pay all or a portion of the fine separately to the clerk of the court for paying
 28 over to the State Fish and Wildlife Commission. The clerk shall pay over to the commission the
 29 amount that the court ordered the defendant to pay separately for that purpose. The amount that
 30 the court orders to be paid separately to the clerk for paying over to the commission shall be the
 31 lesser of:

32 (A) The amount of the fine imposed; or

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

35 (b) If the amount that the commission could recover under ORS 496.705 (2) as damages for the
 36 unlawful taking or killing of wildlife is more than the maximum fine established for the offense un-
 37 der ORS 153.018, 161.625 or 161.635 or a specific fine statute, notwithstanding ORS 153.018, 161.625
 38 or 161.635 or any specific fine statute, the maximum fine for the offense is the amount that the
 39 commission could recover under ORS 496.705 (2) as damages for the unlawful taking or killing.

40 (c) If an amount paid over to the commission under this subsection is less than the amount that
 41 the commission could recover under ORS 496.705 (2) as damages for the unlawful taking or killing
 42 of wildlife, payment of the amount does not prevent the commission from bringing an action under
 43 ORS 496.705 (2) to recover damages for the unlawful taking or killing. However, notwithstanding
 44 ORS 496.705, the amount recoverable under ORS 496.705 (2) by the commission as damages for the
 45 unlawful taking or killing shall be reduced by the amount paid to the commission under this sub-

1 section from a fine imposed for the unlawful taking or killing.

2 [(13)(a)] (14)(a) In addition to any other penalty authorized by law, the court shall order the
 3 State Fish and Wildlife Commission to revoke all licenses, tags and permits issued to a person in the
 4 manner provided for in ORS 497.415 (3), (5) and (6) if the person is convicted of:

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

6 (i) A violation of ORS 498.042; or

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

10 (B) A Class C felony under subsection (9) or (10) of this section.

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

14 [(14)] (15) Upon the third conviction within a 10-year period for violation of a provision of the
 15 wildlife laws, or a rule adopted pursuant to the wildlife laws, the court shall order all guns, boats,
 16 vehicles, traps, fishing apparatus, electronic devices and other implements used in committing the
 17 third or subsequent offense to be seized and forfeited to the State of Oregon, to be turned over to
 18 the State Fish and Wildlife Commission for disposal in the manner provided for in ORS 496.680.

19 [(15)] (16) As used in this section:

20 (a) “Culpable mental state” has the meaning given that term in ORS 161.085.

21 (b) “Previous conviction” includes a conviction entered in the same sentencing proceeding if the
 22 conviction is for a separate criminal episode as defined in ORS 131.505.

23 (c) “Raptor” means a member of the order Falconiformes or Strigiformes and includes owls,
 24 hawks, falcons, eagles, osprey and harriers.

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