

# Enrolled House Bill 4128

Sponsored by Representative HELM, Senator GORSEK; Representatives ALONSO LEON, BYNUM, FAHEY, GOMBERG, GRAYBER, HUDSON, NERON, PHAM, POWER, PRUSAK, REARDON, SMITH G, WILDE, Senators DEMBROW, FREDERICK, GELSER BLOUIN, GOLDEN, KENNEMER, PATTERSON, SOLLMAN (Presession filed.)

CHAPTER .....

AN ACT

Relating to zoonotic disease; creating new provisions; amending ORS 164.115, 496.992 and 497.308; and declaring an emergency.

Whereas zoonotic disease can spread from animals to humans, with an estimated three out of four new or emerging diseases being zoonotic; and

Whereas evidence indicates that many of the worst epidemics and pandemics in recent decades have been zoonotic in origin, including COVID-19, Ebola virus, avian influenza, swine influenza, Middle East Respiratory Syndrome, human immunodeficiency virus and Severe Acute Respiratory Syndrome; and

Whereas wildlife trafficking and trade has been shown to contribute to the transmission and pervasiveness of zoonotic diseases; and

Whereas the COVID-19 pandemic has underscored the immense loss of human life and economic disruption that zoonotic disease can cause; and

Whereas the COVID-19 pandemic has spurred other states to introduce legislation to ban the importation of wildlife and live animal markets, potentially shifting those activities to Oregon; and

Whereas Oregon’s existing wildlife laws and rules do not adequately address the evolving risks and novel zoonotic pathogens that threaten public health, food security, biological diversity and economic security; and

Whereas greater coordination between public health agencies, wildlife management agencies, research institutions and other entities can improve emergency preparedness, prevention and response; now, therefore,

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

**SECTION 1. (1) The Legislative Policy and Research Office, in consultation with the Oregon Health Authority, the Oregon State Police, the State Department of Agriculture and the State Department of Fish and Wildlife, shall prepare a report that evaluates Oregon’s current framework for monitoring, preventing and responding to zoonotic diseases and recommends ways to strengthen the framework.**

**(2) The authority, the Oregon State Police, the State Department of Agriculture and the State Department of Fish and Wildlife shall consult on the report, provide information necessary for development of the report and advise on development of the report, as requested by the office.**

(3) To develop the report, the office may consult with bona fide scientific or educational institutions, as defined in ORS 498.022, state veterinarians, state agencies and any other experts with relevant expertise.

(4) The office shall present the report to a committee or interim committee of the Legislative Assembly related to public health, in the manner provided under ORS 192.245, on or before December 31, 2022.

**SECTION 2.** Sections 3, 4 and 8 of this 2022 Act are added to and made a part of ORS chapter 498.

**SECTION 3.** (1) As used in this section, “prohibited species” means a species that may not be imported, possessed, sold, purchased, exchanged or transported in this state, as established by rule by the State Fish and Wildlife Commission.

(2) The commission shall review and update the list of prohibited species as the commission deems necessary to protect against significant risks to public health from zoonotic disease.

(3) If the Oregon Health Authority identifies a wildlife species as posing a significant risk to public health from zoonotic disease:

(a) The authority shall notify the commission of the risk as soon as practicable.

(b) After the notification, the commission shall review and update relevant rules related to wildlife as necessary to protect the public from the risk, including by adding the species to the list of prohibited species.

(4) In making decisions under this section, the commission:

(a) Shall use the best available science.

(b) Shall consult with the authority and the State Department of Agriculture.

(c) May consult with bona fide scientific or educational institutions, as defined in ORS 498.022, and any other experts with relevant expertise.

(5) In addition to actions described in this section, the commission may take any lawful action the commission deems necessary to protect the public from a potential for transmission of zoonotic disease.

(6) Notwithstanding subsection (5) of this section, this section does not authorize commission action related to a species utilized in farm use, as defined in ORS 308A.056.

**SECTION 4.** (1) The State Fish and Wildlife Commission may institute suit for recovery of damages in the amount of \$2,500 for a violation of a rule related to the list of prohibited species, as defined in section 3 of this 2022 Act.

(2) Each action in violation of a rule related to the list of prohibited species that pertains to an individual animal constitutes a separate violation for purposes of this section.

(3) The amount recoverable under this section shall be reduced by any amount paid to the commission under ORS 496.992 (15).

(4) In a suit brought under this section, the court shall award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees.

(5) Civil damages awarded pursuant to this section are in addition to other penalties prescribed by the wildlife laws.

(6) Any circuit or justice court has jurisdiction to try a case for recovery of damages for violation of a rule related to the list of prohibited species as defined in section 3 of this 2022 Act.

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

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

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

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

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

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

(6) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, relating to the size or quantity limits for fish or shellfish, other than size and quantity limits for salmon, steelhead trout and sturgeon, is a Class C violation if the offense is committed without a culpable mental state.

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

(8) A violation of ORS 496.994 is a Class A violation if the offense is committed without a culpable mental state.

(9) A violation of ORS 498.136, 498.142 or 498.146 is a Class A violation if the offense is committed without a culpable mental state.

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

(11) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, is a Class C felony if the offense involves any of the following and is committed intentionally, knowingly or recklessly:

(a) The unlawful taking of wildlife with the intent to sell or to barter, trade, import, export or otherwise exchange the wildlife or a part of the wildlife.

(b) Except as provided in this paragraph, the second and each subsequent unlawful taking of a game mammal during a 12-month period. This paragraph does not apply to the taking of silver gray squirrel.

(c) The unlawful taking of a moose, mountain sheep, Rocky Mountain goat or wolf.

(d) The third and each subsequent taking of a game fish in excess of a bag limit during a 12-month period.

(e) The second and each subsequent unlawful taking of nonadipose clipped steelhead during a 12-month period.

(f) The unlawful taking of members of the family Acipenseridae that are commonly known as green sturgeon or that are oversized and commonly known as white sturgeon.

(g) The unlawful taking of wildlife that is a threatened species or endangered species.

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

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

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

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

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

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

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

(13) If more than one minimum fine described in subsection (12) of this section applies, the court shall impose a fine in an amount that is not less than the highest of the applicable minimum fines.

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

(A) The amount of the fine imposed; or

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

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

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

**(15)(a) If a court imposes a fine as penalty for an offense under the wildlife laws that involves a violation of a rule related to the list of prohibited species, as defined in section 3 of this 2022 Act, the court shall order that the defendant pay all or a portion of the fine separately to the clerk of the court for paying over to the commission. The clerk shall pay over to the commission the amount that the court ordered the defendant to pay separately for that purpose, which shall be the lesser of:**

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

**(B) The amount that the commission could recover under section 4 of this 2022 Act as civil damages.**

**(b) The amount recoverable under section 4 of this 2022 Act shall be reduced by the amount paid to the commission under this subsection.**

*[(15)(a)]* **(16)(a)** In addition to any other penalty authorized by law, the court shall order the *[State Fish and Wildlife Commission]* **commission** to revoke all licenses, tags and permits issued to a person in the manner provided for in ORS 497.415 (3), (5) and (6) if the person is convicted of:

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

(i) A violation of ORS 498.042; or

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

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

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

*[(16)]* **(17)** Upon the third conviction within a 10-year period for violation of a provision of the wildlife laws, or a rule adopted pursuant to the wildlife laws, the court shall order all guns, boats, vehicles, traps, fishing apparatus, electronic devices and other implements used in committing the

third or subsequent offense to be seized and forfeited to the State of Oregon, to be turned over to the [State Fish and Wildlife Commission] **commission** for disposal in the manner provided for in ORS 496.680.

[(17)] (18) As used in this section:

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

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

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

**SECTION 6. Section 4 of this 2022 Act and the amendments to ORS 496.992 by section 5 of this 2022 Act apply to offenses committed on or after the effective date of this 2022 Act.**

**SECTION 7.** ORS 164.115 is amended to read:

164.115. For the purposes of chapter 743, Oregon Laws 1971, the value of property shall be ascertained as follows:

(1) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot reasonably be ascertained, the cost of replacement of the property within a reasonable time after the crime.

(2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, including, but not limited to, a check, draft or promissory note, shall be considered the amount due or collectible thereon or thereby.

(b) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be considered the greatest amount of economic loss which the owner might reasonably suffer because of the loss of the instrument.

(3) The value of a gambling chip, token, imitation currency or similar device is its face value.

(4)(a) The value of the wildlife listed in ORS 496.705 is the amount of damages as specified in ORS 496.705.

**(b) The value of the wildlife listed on the list of prohibited species, as defined in section 3 of this 2022 Act, is the amount of damages as specified in section 4 of this 2022 Act.**

(5) When the value of property cannot reasonably be ascertained, it shall be presumed to be an amount less than \$100 in a case of theft, and less than \$500 in any other case.

(6) The value of single theft transactions may be added together if the thefts were committed:

(a) Against multiple victims by similar means within a 30-day period; or

(b) Against the same victim, or two or more persons who are joint owners, within a 180-day period.

**SECTION 8. (1) In this state, a person may not sell, offer for sale or otherwise participate in the sale or offer for sale of wildlife that is sold alive for the purpose of human consumption.**

**(2) This section does not apply to the otherwise lawful sale, offer for sale or other participation in the sale or offer for sale of an animal:**

**(a) Utilized in farm use, as defined in ORS 308A.056.**

**(b) Described in ORS 506.011 that is lawfully raised or harvested.**

**SECTION 9.** ORS 497.308 is amended to read:

497.308. (1) No person shall remove from its natural habitat or acquire and hold in captivity any live wildlife in violation of the wildlife laws or [of] any rule [promulgated pursuant thereto] **adopted thereunder.**

(2) The State Fish and Wildlife Commission may [promulgate] **adopt** rules to carry out the provisions of subsection (1) of this section that include but are not limited to:

(a) Providing for the issuance and form of permits for the holding or removal from habitat of wildlife.

(b) Prescribing the wildlife species for which holding or habitat removal permits are required.

(c) Prescribing the terms and conditions of holding wildlife and removing wildlife from habitat to [insure] ensure the humane care and treatment of the wildlife.

**(3) In adopting rules authorized by subsection (2) of this section, the commission shall:**

**(a) Strive to protect public health;**

**(b) Consider any public health risks related to holding wildlife or transmitting zoonotic disease, including any public health risks identified by the Oregon Health Authority; and**

**(c) Consult with the authority.**

[3] (4) No person to whom a wildlife holding or removal from habitat permit has been issued shall violate any of the terms or conditions thereof.

**SECTION 10. This 2022 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect on its passage.**

**Passed by House February 9, 2022**

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

**Passed by Senate February 21, 2022**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2022

**Approved:**

.....M,....., 2022

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2022

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Shemia Fagan, Secretary of State