

House Bill 3035

Sponsored by Representatives WITT, HELM; Representatives BARKER, CLEM, SPRENGER, STARK, Senator JOHNSON

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 maximum penalty for certain wildlife law offenses committed without culpable mental state to \$2,000 fine.

Increases maximum penalty for certain wildlife law offenses committed intentionally, knowingly or recklessly to five years' incarceration, \$125,000 fine, or both.

A BILL FOR AN ACT

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

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

5 **SECTION 1.** ORS 496.992, as amended by section 1, chapter 14, Oregon Laws 2018, is amended
6 to read:

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

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

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

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

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

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

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

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

30 **(9) A violation of ORS 498.136, 498.142 or 498.146 is a Class A violation if the offense is**

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 **committed without a culpable mental state.**

2 [(9)] (10) The second and each subsequent conviction within a 10-year period for the taking of
 3 a raptor or the taking of game fish with a total value of \$200 or more or the taking of antelope,
 4 black bear, cougar, deer, elk, moose, mountain goat or mountain sheep in violation of any provision
 5 of the wildlife laws, or any rule adopted pursuant thereto, that occurs more than one hour prior to,
 6 or more than one hour subsequent to, a season established for the lawful taking of such game
 7 mammals or game fish is a Class C felony if the offense is committed with a culpable mental state.

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

11 **(a) The unlawful taking of wildlife with the intent to sell or to barter, trade, import, ex-**
 12 **port or otherwise exchange the wildlife or a part of the wildlife.**

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

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

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

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

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

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

24 [(10)] (12) If a person is convicted of a Class A misdemeanor under subsection (1) of this section,
 25 in addition to any other penalty authorized by law, the court shall impose a fine that is:

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

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

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

32 (B) Unlawfully taking wildlife [*with the intent*] to sell, barter, trade, import or export the wildlife,
 33 or parts thereof, or selling, bartering, trading, importing or exporting unlawfully taken wildlife, or
 34 parts thereof; or

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

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

38 [(11)] (13) If more than one minimum fine described in subsection [(10)] (12) of this section ap-
 39 plies, the court shall impose a fine in an amount that is not less than the highest of the applicable
 40 minimum fines.

41 [(12)(a)] (14)(a) If a court imposes a fine as penalty for an offense under the wildlife laws that
 42 involves the unlawful taking or killing of wildlife listed under ORS 496.705 (2), the court shall order
 43 that the defendant pay all or a portion of the fine separately to the clerk of the court for paying
 44 over to the State Fish and Wildlife Commission. The clerk shall pay over to the commission the
 45 amount that the court ordered the defendant to pay separately for that purpose. The amount that

1 the court orders to be paid separately to the clerk for paying over to the commission shall be the
 2 lesser of:

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

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

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

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

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

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

22 (i) A violation of ORS 498.042; or

23 (ii) The unlawful taking of wildlife [with the intent] to sell, barter, trade, import or export the
 24 wildlife, or parts thereof, or selling, bartering, trading, importing or exporting unlawfully taken
 25 wildlife, or parts thereof; or

26 (B) A Class C felony under subsection [(9)] (10) of this section.

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

30 [(14)] (16) Upon the third conviction within a 10-year period for violation of a provision of the
 31 wildlife laws, or a rule adopted pursuant to the wildlife laws, the court shall order all guns, boats,
 32 vehicles, traps, fishing apparatus, electronic devices and other implements used in committing the
 33 third or subsequent offense to be seized and forfeited to the State of Oregon, to be turned over to
 34 the State Fish and Wildlife Commission for disposal in the manner provided for in ORS 496.680.

35 [(15)] (17) As used in this section:

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

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

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

41 **SECTION 2.** ORS 497.400, as amended by section 2, chapter 14, Oregon Laws 2018, is amended
 42 to read:

43 497.400. No person shall:

44 (1) Apply for, obtain or possess for personal use or for the use of any other person more licenses,
 45 tags or permits issued by the State Fish and Wildlife Commission than are authorized for personal

1 use during the current year by the wildlife laws and rules promulgated pursuant thereto.

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

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

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

9 (5) Apply for or obtain any license, tag or permit issued by the commission when civil damages
10 due pursuant to ORS 496.705, moneys due the State Department of Fish and Wildlife from court-
11 ordered restitutions for violations of the wildlife laws or moneys due the commission under ORS
12 496.992 [(12)] (14) have not been paid.

13 **SECTION 3. The amendments to ORS 496.992 by section 1 of this 2019 Act apply to of-**
14 **fenses committed on or after the effective date of this 2019 Act.**

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