

House Bill 3088

Sponsored by Representative WITT

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 with culpable mental state to five years' incarceration, \$125,000 fine, or both.

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

Limits definition of "resident" for purposes of wildlife laws to persons who are not residents of other states.

Authorizes State Fish and Wildlife Commission to adopt rules relating to use of drones by State Department of Fish and Wildlife to prevent or detect poaching.

Requires Attorney General to make one or more employees of Department of Justice available to local governments to assist local governments with prosecuting violations of wildlife laws.

A BILL FOR AN ACT

1
2 Relating to wildlife; creating new provisions; and amending ORS 496.992, 497.002, 497.400 and
3 498.128.

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.

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

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

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

11 **(11) A violation of a provision of the wildlife laws, or a rule adopted pursuant to the**
 12 **wildlife laws, is a Class C felony if the offense involves any of the following and is committed**
 13 **with a culpable mental state:**

14 (a) **The second and each subsequent unlawful taking of wildlife with the intent to sell or**
 15 **to barter, trade, import, export or otherwise exchange the wildlife or a part of the wildlife.**

16 (b) **An unlawful taking of wildlife by an outfitter or guide.**

17 (c) **An unlawful taking of more than 100 wildlife.**

18 [(10)] (12) If a person is convicted of a Class A misdemeanor under subsection (1) of this section,
 19 in addition to any other penalty authorized by law, the court shall impose a fine that is:

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

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

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

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

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

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

32 [(11)] (13) If more than one minimum fine described in subsection [(10)] (12) of this section ap-
 33 plies, the court shall impose a fine in an amount that is not less than the highest of the applicable
 34 minimum fines.

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

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

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

45 (b) If the amount that the commission could recover under ORS 496.705 (2) as damages for the

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

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

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

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

16 (i) A violation of ORS 498.042; or

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

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

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

24 [(14)] (16) Upon the third conviction within a 10-year period for violation of a provision of the
 25 wildlife laws, or a rule adopted pursuant to the wildlife laws, the court shall order all guns, boats,
 26 vehicles, traps, fishing apparatus, electronic devices and other implements used in committing the
 27 third or subsequent offense to be seized and forfeited to the State of Oregon, to be turned over to
 28 the State Fish and Wildlife Commission for disposal in the manner provided for in ORS 496.680.

29 [(15)] (17) As used in this section:

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

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

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

35 **SECTION 2. The amendments to ORS 496.992 by section 1 of this 2019 Act apply to of-**
 36 **fenses committed on or after the effective date of this 2019 Act.**

37 **SECTION 3.** ORS 497.002 is amended to read:

38 497.002. Except as provided in ORS 497.006, as used in this chapter:

39 (1) "Resident" means a person who has resided in this state at least six consecutive months
 40 immediately prior to the date of making application for a license, tag or permit issued by the State
 41 Fish and Wildlife Commission. Temporary absence from the state for a purpose other than estab-
 42 lishing residency outside the state shall not be considered in determining whether a person meets
 43 the residency requirements of this subsection. **Temporary absence does not include any period**
 44 **in which the person is a resident of another state.**

45 (2) "Nonresident" means any person other than a resident.

1 **SECTION 4.** ORS 497.400, as amended by section 2, chapter 14, Oregon Laws 2018, is amended
2 to read:

3 497.400. No person shall:

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

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

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

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

14 (5) Apply for or obtain any license, tag or permit issued by the commission when civil damages
15 due pursuant to ORS 496.705, moneys due the State Department of Fish and Wildlife from court-
16 ordered restitutions for violations of the wildlife laws or moneys due the commission under ORS
17 496.992 [(12)] (14) have not been paid.

18 **SECTION 5.** ORS 498.128 is amended to read:

19 498.128. (1) The State Fish and Wildlife Commission shall adopt rules prohibiting the use of
20 drones for the following purposes related to the pursuit of wildlife:

21 (a) Angling;

22 (b) Hunting;

23 (c) Trapping;

24 (d) Aiding angling, hunting or trapping through the use of drones to harass, track, locate or
25 scout wildlife; and

26 (e) Interfering in the acts of a person who is lawfully angling, hunting or trapping.

27 (2) Rules adopted to carry out the prohibitions provided for in this section may include ex-
28 emptions for:

29 (a) Subject to ORS 837.360, the State Department of Fish and Wildlife and the department's
30 agents and contractors for the use of drones in carrying out the duties of the department[; or], **in-**
31 **cluding but not limited to the prevention or detection of poaching; and**

32 (b) The use of drones in a manner otherwise prohibited under this section if the purpose of the
33 use is to benefit wildlife management or habitat or for the protection of property.

34 (3) Nothing in this section is meant to limit the use of drones by a person who is lawfully en-
35 gaging in activities authorized under the commercial fishing laws.

36 (4) As used in this section, "drone" means:

37 (a) An unmanned flying machine;

38 (b) An unmanned water-based vehicle; or

39 (c) Any other vehicle that is able to operate in the air, in or under the water or on land, either
40 remotely or autonomously, and without a human occupant.

41 **SECTION 6. The Attorney General shall make one or more employees of the Department**
42 **of Justice available to a local government to assist the local government with prosecuting**
43 **violations of the wildlife laws.**

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