



## ***Final Analysis***

*Eric Vendel*

*Legislative Service Commission*

### **Am. H.B. 238** 127th General Assembly (As Passed by the General Assembly)

**Reps. Latta and J. Stewart, J. McGregor, Bubp, Evans, Ujvagi, Koziura, Zehringer, Bolon, Okey, Miller, Aslanides, Distel, Goodwin, Huffman, Sayre, Hite, Luckie, Adams, Batchelder, Book, Chandler, DeBose, Domenick, Dyer, Gibbs, Goyal, J. Hagan, Hughes, Letson, Mallory, Otterman, Patton, Schlichter, Uecker, Wachtmann, Wagoner, Webster, Widener, Yates**

**Sens. Grendell, Mumper, Schaffer, Niehaus, D. Miller, Buehrer, Cates, Gardener, Harris, Kearney, Spada, Wilson, Faber**

**Effective date:** \*\*

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### **ACT SUMMARY**

- Retains continuing law authorizing the Chief of the Division of Wildlife or his authorized representative to bring a civil action to recover possession of or the value of any wild animal that is unlawfully held, taken, or possessed, but eliminates the Chief's authority to bring a civil action against a person who unlawfully exercised control over a wild animal.
- Adds authority to bring a civil action to recover possession of or the restitution value of any wild animal that is unlawfully bought or sold.
- Eliminates amounts established in former law for the restitution value of specified wild animals, and instead requires the minimum restitution value to the state for wild animals that are unlawfully held, taken, bought, sold, or possessed to be established in Division rule.

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\* A correction was made to the list of sponsors.

\*\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

- Specifies that in addition to any restitution value established in Division rule, a person who is convicted of unlawfully holding, taking, buying, selling, or possessing an antlered white-tailed deer with a gross score of more than 125 inches also must pay an additional restitution value that is calculated using a formula established in the act, and defines "gross score" as the number derived by calculating the measurements of the antlers of a white-tailed deer in accordance with the act.
- Requires the Chief, upon the conviction of a person for the illegal holding, taking, buying, selling, or possessing of a wild animal, to revoke all hunting and fishing licenses, permits, and stamps issued to the person until restitution payment is made.
- Authorizes a court, rather than requires a court as in former law, upon the conviction of or plea of guilty by a person for the illegal holding, taking, buying, selling, or possession of a wild animal, to require the person to make restitution for the minimum value of the wild animal.

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## CONTENT AND OPERATION

Under law largely unchanged by the act, the Chief of the Division of Wildlife in the Department of Natural Resources or his authorized representative may bring a civil action to recover possession of or the value of any wild animal held, taken, or possessed in violation of the law governing hunting and fishing or any rule adopted under it against any person who held, took, possessed, or exercised control over the wild animal. The act generally retains that provision, except that it eliminates the Chief's authority to bring a civil action against a person who exercised control over the wild animal in violation of the law. The act adds authority to bring a civil action to recover possession of or the restitution value of any wild animal bought or sold in violation of the law against a person who did the unlawful buying or selling. (Sec. 1531.201(B).)

Former law specified that except as otherwise provided by Division rule, the following were presumed to be the minimum value to the state of wild animals illegally held, taken, or possessed: \$10 for each fish; \$25 for each nongame bird; \$50 for each fur-bearing animal, game bird, or game quadruped; \$100 for each hawk or owl; \$300 for each wild turkey; \$400 for each white-tailed deer; \$750 for each osprey; \$1,000 for each eagle or endangered or threatened species; and \$200 for each other wild animal (sec. 1531.201(A) to (L)). The act eliminates those amounts that were established in statute and instead requires the minimum restitution value to the state for wild animals that are unlawfully held, taken, bought, sold, or possessed to be established in Division rule (sec. 1531.201(B)).

The act retains law specifying that nothing in the above provisions affects the right of seizure under any other section of the Revised Code (sec. 1531.201(E)).

The act then specifies that in addition to any restitution value established in Division rule, a person who is convicted of a violation of the law governing hunting and fishing or a rule adopted under it that governs the holding, taking, buying, sale, or possession of an antlered white-tailed deer with a gross score of more than 125 inches also must pay an additional restitution value that is calculated using the following formula: additional restitution value = ((gross score - 100)<sup>2</sup> x \$1.65) (sec. 1531.201(C)(1)). Under the act, the gross score of an antlered white-tailed deer must be determined by taking and adding together all of the following measurements, which must be made to the nearest one-eighth of an inch using a one-quarter-inch wide flexible steel tape:

(1) Inside spread of the main antler beams, not to exceed the length of the longest main antler beam. "Inside spread of main antler beams" is defined as the measurement at right angles to the center line of the skull of a white-tailed deer at the widest point between main antler beams (sec. 1531.201(A)(5)).

(2) Length of the right main antler beam. "Length of main antler beam" is defined as the measurement from the lowest outside edge of the antler burr of a white-tailed deer over the outer curve to the most distant point of what is or appears to be the main antler beam beginning at the place on the antler burr where the center line along the outer curve of the beam intersects the antler burr (sec. 1531.201(A)(6)). "Antler burr" is defined as the elevated bony rim around the antler base of a white-tailed deer that is just above the skin of the pedicle (sec. 1531.201(A)(7)).

(3) Length of the left main antler beam;

(4) Total length of all abnormal points. "Point" is defined as a projection on the antler of a white-tailed deer that is at least one-inch long as measured from its tip to the nearest edge of antler beam and the length of which exceeds the length of its base. "Point" does not include an antler beam tip. (Sec. 1531.201(A)(2).) "Abnormal point" is defined as a point that is nontypical in shape or location (sec. 1531.201(A)(3)).

(5) Total length of all normal points as measured from the nearest edge of the main antler beam over the outer curve to the tip. "Normal point" is defined as a point that projects from the main antler beam in a typical shape or location (sec. 1531.201(A)(4)). The act specifies that to determine the baseline for normal point measurement, the tape must be laid along the outer curve of the antler beam so that the top edge of the tape coincides with the top edge of the antler beam on both sides of the point.

(6) Circumference taken at the narrowest place between the antler burr and the first normal point on the right main antler beam. If the first normal point is missing, the circumference must be taken at the narrowest place between the antler burr and the second normal point.

(7) Circumference taken at the narrowest place between the first normal point and the second normal point on the right main antler beam. If the first normal point is missing, the circumference must be taken at the narrowest place between the antler burr and the second normal point.

(8) Circumference taken at the narrowest place between the second normal point and the third normal point on the right main antler beam;

(9) Circumference taken at the narrowest place between the third normal point and the fourth normal point on the right main antler beam. If the fourth normal point is missing, the circumference must be taken halfway between the third normal point and the tip of the main antler beam.

(10) Circumference taken at the narrowest place between the antler burr and the first normal point on the left main antler beam. If the first normal point is missing, the circumference must be taken at the narrowest place between the antler burr and the second normal point.

(11) Circumference taken at the narrowest place between the first normal point and the second normal point on the left main antler beam. If the first normal point is missing, the circumference must be taken at the narrowest place between the antler burr and the second normal point.

(12) Circumference taken at the narrowest place between the second normal point and the third normal point on the left main antler beam;

(13) Circumference taken at the narrowest place between the third normal point and the fourth normal point on the left main antler beam. If the fourth normal point is missing, the circumference must be taken halfway between the third normal point and the tip of the main antler beam. (Sec. 1531.201(C)(2).)

The act specifies that antlers may be measured at any time; no drying time is required (sec. 1531.201(C)(2)). Under the act, "gross score" is defined as the number derived by calculating the measurements of the antlers of a white-tailed deer by adding the measurements in items (1) through (13), above (sec. 1531.201(A)(1)).

Under the act, upon conviction of holding, taking, buying, selling, or possessing a wild animal in violation of the law governing hunting or fishing or a Division rule, the Chief must revoke until payment of the restitution value is made

each hunting license, fur taker permit, deer permit, wild turkey permit, wetlands habitat stamp, and fishing license issued to that person under that law. No fee paid for such a license, permit, or stamp can be returned to the person. Upon accordingly revoking a person's license, permit, or stamp or a combination thereof, the Chief immediately must send a notice of that action by certified mail to the last known address of the person. The notice must state the action taken, order the person to surrender the revoked license, permit, or stamp or combination thereof, and state that the Department of Natural Resources will not afford a hearing as required under the Administrative Procedure Act. (Sec. 1531.201(D).)

Law retained in part by the act states that a court that imposes sentence for a violation of a provision of the Division of Wildlife Law or the Hunting and Fishing Law governing the holding, taking, buying, selling, or possession of wild animals must require the person who is convicted of or pleads guilty to the offense, in addition to any fine, term of imprisonment, seizure, and forfeiture imposed, to make restitution for the minimum value of the wild animal illegally held, taken, bought, sold, or possessed. The act authorizes, rather than requires, the court to require such a person to make restitution for the minimum value of the wild animal. (Secs. 1531.99 and 1533.99.)

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## HISTORY

ACTION	DATE
Introduced	05-29-07
Reported, H. Agriculture & Natural Resources	06-20-07
Passed House (96-0)	06-27-07
Reported, S. Environment & Natural Resources	10-18-07
Passed Senate (29-1)	11-14-07

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