

No. 86

5th Session, 13th Legislature, Alberta
7 Elizabeth II, 1959

BILL 86

A Bill to amend The Game Act

HON. MR. WILLMORE

Explanatory Note

2. The office of "Fish and Game Commissioner" is being changed to the office of the "Director of Fish and Wildlife".

3. (b) See note to clause 2 above.

(c) Clause (r) presently reads as follows:

"(r) "game officer" means

(i) a game officer appointed by the Lieutenant Governor in Council under section 122 for the purpose of enforcing the provisions of this Act, and

(ii) those persons designated by section 124;"

(d) This clause defines "Indian" for the purposes of section 142 which it is proposed to remove from the Act.

(e) Self-explanatory.

4. Section 7 presently reads:

"7. No person shall keep in captivity any big game or fur-bearing animal unless he is the holder of a valid and subsisting licence or permit issued pursuant to this Act."

BILL

No. 86 of 1959

An Act to amend The Game Act

(Assented to _____, 1959)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Game Act*, being chapter 126 of the Revised Statutes, is hereby amended.

2. The words "Fish and Game Commissioner" are struck out wherever they occur and the word "Director" substituted.

3. Section 2 is amended

(a) by renumbering the section as subsection (1),

(b) by adding immediately after clause (f) of the renumbered subsection (1) the following clause:

(f1) "Director" means the Director of Fish and Wildlife;

(c) as to clause (r) of the renumbered subsection (1) by striking out the words "by the Lieutenant Governor in Council",

(d) by striking out clause (x) of the renumbered subsection (1),

(e) by adding immediately after the renumbered subsection (1) the following:

(2) A reference to the Fish and Game Commissioner in

(a) the regulations or an order of the Minister made under this Act,

(b) any licence or permit issued pursuant to this Act or the regulations, and

(c) any other Act of the Legislature and any regulations made under any such Act,

shall be deemed to be a reference to the Director.

4. Section 7 is amended

(a) by adding immediately after the words "big game" the words ", game bird",

5. The word "chamber" is the more commonly used term in this Act and similar Acts of other jurisdictions. Section 10, subsection (4) presently reads as follows:

"10.

(4) A shotgun, rifle or other firearm carrying a loaded shell or cartridge in the breech shall be deemed to be loaded within the meaning of subsection (1)."

6. Section 17 presently reads as follows:

"17. No licence or permit shall be issued to a person under sixteen years of age except on the written application of his parent or guardian."

7. Section 25, subsection (1) is revised to remove a duplication in the present clause (a) with section 5, i.e. hunting without a licence or permit. Section 25, subsection (1) presently reads as follows:

"25. (1) Except as otherwise provided in this Act, no person shall hunt big game, fur-bearing animals or game birds, unless

(a) he is expressly authorized to do so by virtue of a valid and subsisting licence or permit issued under this Act or the regulations, and

(b) the licence or permit is carried by such person."

8. Section 27, subsection (1) presently reads as follows:

"27. (1) Except as otherwise permitted by this Act or the regulations, no person shall hunt, take or kill or have in his possession any big game with horns less than four inches in length or any big game under the age of one year except brown, black or cinnamon bears."

9. Section 30 is amended to set out more clearly the many prohibitions herein contained; it adds one more, namely, a prohibition against hunting big game with a shotgun using shot shells. Section 30 presently reads as follows:

"30. No person shall, for the purpose of hunting, taking or killing any big game, set out, use or employ any traps, nets or snares of any kind, or use any rifle firing a .22 calibre rim fire cartridge, or use any shotgun of any description, or use or employ any search-light, spot-light, flash-light, jack-light, night-light, pit-lamp, head-light, or any other light of any description."

10. Section 32 presently reads as follows:

"32. A non-resident whilst engaged in hunting big game in the Province shall be accompanied either by a guide licensed pursuant to this Act or by a resident of the Province."

(b) by adding immediately after the word "Act" the words "or the regulations".

5. Section 10, subsection (4) is amended by striking out the word "breech" and by substituting the word "chamber".

6. Section 17 is struck out and the following substituted:

17. No licence or permit shall be issued

- (a) to a person under the age of fourteen years, or
- (b) to a person over the age of thirteen years but under the age of sixteen years unless the application for the licence or permit is made by, or with the consent in writing of, the parent or guardian of such person.

7. Section 25 is amended by striking out subsection (1) and by substituting the following:

25. (1) Except as otherwise provided by this Act or the regulations, no one shall hunt big game, game birds or fur-bearing animals unless the licence or permit issued pursuant to this Act or the regulations authorizing him to do so is carried on his person.

8. Section 27, subsection (1) is amended by adding immediately after the word "horns" the words "or antlers".

9. Section 30 is struck out and the following is substituted:

30. No person shall, for the purpose of hunting or killing big game,

- (a) set out, use or employ any traps, nets or snares of any kind,
- (b) set out, use or employ any search-light, spot-light, flash-light, jack-light, night-light, pit-lamp, head-light, or any other light of any kind,
- (c) use any rifle firing a .22 calibre rim-fire cartridge, or
- (d) use or load any shotgun with any ammunition other than the shells commonly referred to as shotgun slug loads.

10. Section 32 is struck out and the following is substituted:

32. Unless otherwise provided by the regulations, a non-resident while engaged in hunting big game shall be accompanied by

- (a) a guide holding a Class A or Class B guide's licence issued pursuant to this Act, where such hunting is done in

11. Section 33 presently reads as follows:

"33. A person who resides in that part of the Province lying to the north of a line, commencing at the intersection of the north boundary of township 76 with the inter-provincial boundary between Alberta and Saskatchewan, thence westward along the north boundary of township 76 to the east boundary of range 18, west of the fifth meridian, thence north along the east boundary of range 18, west of the fifth meridian, to the north boundary of township 88 (23rd base line), thence west along the north boundary of township 88 to the inter-provincial boundary between Alberta and British Columbia, at a point that is not included within the corporate boundaries of any city, town or village, may, without a licence, kill and take big game for the purpose of providing necessary food for himself and family, when it is necessary to do so at any time of the year."

This amendment will extend part of the boundary of this area of the Province 48 miles to the north.

12. This amendment is primarily for clarification in administration. Section 36 presently reads as follows:

"36. (1) Any person who accidentally, by mistake or otherwise, unlawfully kills any big game animal shall properly dress the carcass and then forthwith report the matter to the nearest game officer, game guardian, constable or a justice of the peace, and shall at the same time submit an affidavit setting out the circumstances of the killing.

(2) The person responsible for the killing of the big game animal shall pay for or otherwise be held responsible for the delivery of the carcass in a good state of preservation to the nearest game officer, game guardian, constable or justice of the peace who shall dispose of the meat and the hide in accordance with instructions from the Minister."

13. (a) Subsection (1) of section 50 reads:

"50. (1) No person shall

(a) shoot or spear any muskrat or otter at any time, or

(b) cut, spear, open, break, partially destroy or destroy at any time a beaver house or beaver dam, or muskrat runway or muskrat den."

(b) Subsection (5) reads:

"(5) No person shall use a dog in any manner whatsoever for the taking or killing of any mink, muskrat, marten, fox, fisher, lynx, beaver or otter."

- (i) a forest reserve constituted under *The Forest Reserves Act*, or
 - (ii) any other part of the Province designated in the regulations,
- or
- (b) a guide licensed pursuant to this Act or a resident of the Province, where such hunting is done in any part of the Province other than the areas referred to in clause (a).

11. Section 33 is amended

- (a) by striking out the words and figures "township 88 (23rd base line)" and by substituting the words and figures "township 96 (25th base line)",
- (b) by striking out the word and figures "township 88" and by substituting the word and figures "township 96".

12. Section 36 is struck out and the following is substituted:

36. (1) Where any person, being the holder of a licence to hunt big game, unlawfully kills a big game animal at a time and in an area within which it is otherwise lawful to hunt big game, he shall forthwith

- (a) properly dress the carcass of the animal,
- (b) affix to the carcass the proper metal tag referred to in section 40, and
- (c) deliver the carcass in a good state of preservation to the nearest game officer, game guardian or constable, who shall dispose of it in accordance with instructions from the Minister.

(2) A person who complies with subsection (1) shall not be prosecuted for an offence under section 5, 6, or 19 in respect of the big game animal so delivered by him unless the Minister consents in writing to a prosecution being proceeded with.

13. Section 50 is amended

- (a) by striking out subsection (1) and by substituting the following:

50. (1) No person shall cut, spear, open, break, partially destroy or destroy at any time a beaver house or beaver dam, or muskrat runway or muskrat den.

- (b) by striking out subsection (5).

14. Section 76, subsection (2) presently reads as follows:

"76. (1)

(2) For the purpose of this section, the word "premises" means a place of business, such as a store, trading post, or office, occupied by the licensee for the purpose of buying, selling, trading, dealing, bartering, soliciting or trafficking in the skins or pelts of fur-bearing animals, but does not include any pool room, barber shop, hotel room, boarding house, or any private residence, or that part of any building used as a private residence."

15. Subsections (2) and (3) of section 93 presently read as follows:

"(2) No Class A guide's licence shall be issued to a person unless he has been the holder of a Class B guide's licence for at least three years.

(3) No Class B guide's licence shall be issued to a person until the applicant has met the requirements established by regulations made by the Lieutenant Governor in Council."

16. Section 101 presently reads as follows:

"101. An outfitter,

(a) who fails to report forthwith any offence under the provisions of this Act or the regulations, or

(b) who has in his employ any guide, cook, wrangler, camp helper, or other employee who violates any of the provisions of this Act or the regulations,

is liable to the suspension of his licence as well as any penalty that may be imposed under this Act."

14. Section 76 is amended by striking out subsection (2) and substituting the following:

(2) In subsection (1), "premises" means a store, trading post, office or other place of business occupied or used by the licensee for the purpose of buying, selling, trading, dealing, bartering, soliciting or trafficking in the skins or pelts of fur-bearing animals, but does not include

- (a) a pool room, barber shop, tent or trailer,
- (b) a room in a hotel, motel, auto court, lodging house or boarding house, or
- (c) a building or part of a building occupied or used as a permanent or temporary residence notwithstanding that it is connected with another part of a building that is used for the purposes of a business by a door, aperture, passageway, staircase or other means of access.

15. Section 93 is amended by striking out subsections (2) and (3) and by substituting the following:

(2) No Class A guide's licence shall be issued to a person unless he has previously held a Class A guide's licence or has been the holder of a Class B guide's licence for any three years preceding the year in which his application is made.

(3) No Class A or Class B guide's licence shall be issued to a person unless he has met any examination requirements prescribed by the Minister.

(3a) An application for a Class A or Class B guide's licence shall

- (a) be accompanied by the affidavit of the applicant deposing as to his period of residence in the Province and to the area of the Province in which he intends to act as a guide, and
- (b) be approved by a game officer.

(3b) A Class B guide is authorized to act as a guide under the direction of a Class A guide who is in charge of a hunting party and, unless otherwise authorized by a game officer, no Class B guide shall himself take charge of or act as a guide for a hunting party.

16. Section 101 is amended

- (a) as to clause (b) by striking out the word "guide" and by substituting the words "licensed guide",
- (b) by adding the word "or" at the end of clause (b),
- (c) by adding immediately after clause (b) the following:
 - (c) who, while acting as an outfitter for a party hunting big game in any of the areas of the Province referred to in clause (a) of section 32, has in his employ a guide who is not the holder of a Class A or Class B guide's licence.

17. Sections 104 to 109 read as follows:

"104. No person shall keep in captivity or offer for sale, barter or exchange any game birds without having first obtained a licence under this Act and authorizing him to do so.

"105. A licence granted to a person to operate a game farm expires on the thirtieth day of June following the date of issue, and that person shall not be granted any further licence to operate a game farm until he has made all the returns and reports that he is required to make under this Act and the regulations.

"106. (1) A holder of a game farm licence shall cause to be securely attached to the right leg of each game bird kept by him in captivity and over the age of four months, a leg band.

(2) The leg bands shall be numbered and issued in series, a separate series being assigned to each licensee, and the bands shall be supplied to the licensee by the Department upon payment of a fee of five cents for each leg band supplied.

(3) No person shall remove the leg band attached to any game bird until the game bird is ready for consumption.

(4) No licensee to whom leg bands have been supplied by the Department shall transfer them to another licensee except in the case of leg bands attached to game birds that are sold for breeding purposes.

"107. Game birds bred and kept in captivity in conformity with this Act and the regulations may be exposed for sale or sold but,

(a) each sale of a game bird for food shall be reported forthwith to the Fish and Game Commissioner, and

(b) each sale of a live game bird for breeding purposes shall be reported to the Fish and Game Commissioner within fourteen days after the date of sale.

"108. (1) A holder of a game farm licence shall forward to the Fish and Game Commissioner all the returns or reports required to be made under this Act or the regulations.

(2) Every such report or return shall be in a form prescribed by the Fish and Game Commissioner and shall show the number of the leg band attached to each game bird sold or otherwise disposed of.

"109. The holder of a game farm licence shall not sell or export any game bird whatsoever beyond the boundaries of the Province without having first obtained a permit from the Minister and authorizing him to do so."

18. See note to clause 2 above. Section 122 presently reads as follows:

"122. Subject to The Public Service Act, the Lieutenant Governor in Council may appoint a Game Commission, a Fish and Game Commissioner, game officers and other officers and fix their remuneration and prescribe their duties."

19. Section 124, clause (b) presently reads as follows:

"124. All members of the Royal Canadian Mounted Police, all forest officers and all fishery officers

.....

(b) have the same powers and duties as are conferred or imposed upon a game officer appointed by the Lieutenant Governor in Council pursuant to this Act."

20. Section 126, subsection (1) begins: "The Lieutenant Governor in Council may make regulations providing"

17. Sections 104 to 109 are repealed.

18. Section 122 is struck out and the following is substituted:

122. The Minister may appoint a Director of Fish and Wildlife, game officers and other officers and prescribe their duties.

19. Section 124, clause (b) is amended by striking out the words "by the Lieutenant Governor in Council".

20. Section 126, subsection (1) is amended by adding immediately after clause (n) the following:

(nn) for the licensing and regulating of big game farms where big game animals are kept for the purposes of propagation or for sale, gain or profit,

21. Section 142 which is thought to be legislation in respect of Indians as Indians and thus ultra vires, is repealed. It reads as follows:

"142. (1) Where a fur-bearing animal is taken by an Indian for food during the close season for such animal, the pelt shall

- (a) be the property of the Crown,
- (b) not be sold or otherwise disposed of by the Indian, and
- (c) delivered by him forthwith on demand to a constable or game officer.

(2) Where a big game animal is taken by an Indian, the skin or hide of such animal shall not be sold or otherwise disposed of, until such skin or hide has been manufactured into articles of wearing apparel by the Indian or a member of his immediate family.

(3) Subsection (2) shall not be construed as forbidding an Indian from selling, trading or bartering any such skin or hide to an Indian school engaged in the manufacture of wearing apparel or other Indian crafts.

(4) For the purpose of this section, all lands set aside or designated as game preserves, Provincial parks, bird sanctuaries, registered trap-lines and fur rehabilitation blocks, shall be deemed to be occupied Crown lands and not lands to which an Indian has a right of access.

(5) Subsection (4) shall not be construed as forbidding an Indian from hunting, taking or killing big game animals for food at all seasons of the year on lands set aside or designated as registered trap-lines."

22. Section 148(1) is redrafted for the purpose of clarifying the position of magistrates in dealing with things seized under section 135. The subsection is presently silent as to circumstances under which the magistrate is to return seized articles. Clauses (a) and (b) set out the only circumstances under which anything seized is to be confiscated to the Crown. Where there is a plea of guilty the thing seized is to be returned forthwith. Where there is an acquittal or conviction following a plea of not guilty the thing seized is to be held during the time limited for an appeal to the district court, that is, thirty days. Under the new subsection (1a) the Minister may return the article seized during the appeal period. This is intended to take care of the case where an acquittal has been adjudged and the Crown has no intention of appealing. Section 148, subsection (1) presently reads as follows:

"148. (1) Where any game, pelts, skins, containers, vehicles, aircraft, vessels, launches, boats, canoes, firearms, ammunition, decoys, traps, snares, gear, materials, implements and appliances for shooting, hunting, trapping or snaring game are under seizure,

- (a) in case a violation of this Act or of the regulations has occurred and the owner is unknown, the justice shall direct that all such chattels under seizure become the property of Her Majesty in the right of the Province to be disposed of as the Minister may direct,
- (b) in the case of conviction, where the chattels seized are big game, game birds, or pelts or skins of fur-bearing animals, or any part thereof, or where anything is seized in connection with a violation of sections 9, 30 or 43, the justice shall direct by the conviction or by a separate order that the things so seized be confiscated to the Crown in the right of the Province to be disposed of as the Minister may direct."

21. Section 142 is repealed.

22. Section 148 is amended by striking out subsection (1) and by substituting the following:

148. (1) Where anything is seized under the authority of subsection (1) of section 135, the justice shall

(a) order the thing seized to be confiscated to the Crown in right of the Province where

(i) he is satisfied that its owner is unknown and that it has been used in connection with a contravention of this Act or the regulations, or

(ii) it is used in connection with an offence under section 9, 30 or 43 in respect of which a conviction is adjudged,

(b) in any case where the thing seized is game, order the game confiscated to the Crown in right of the Province upon a conviction for any offence under this Act or the regulations,

(c) order the thing seized to be returned to the person from whom it was taken at the expiration of the time limited by law for an appeal, where an adjudication is made following a plea of not guilty and no appeal is made, or

(d) order the thing seized to be returned forthwith to the person from whom it was taken, where a conviction is made following a plea of guilty or in any other case not referred to in clause (a), (b) or (c).

(1a) Notwithstanding clause (c) of subsection (1), where a justice has made an order under that clause, the Minister may order the thing seized to be returned forthwith to the person from whom it was taken at any time before the expiration of the time limited by law for an appeal from the adjudication.

23. Section 154 is redrafted, both for the purpose of clarification and to eliminate certain provisions presently causing hardships.

Subsection (1) as presently worded operates to cancel every licence or permit where anyone is convicted under the Act or the regulations. For example, a fur dealer convicted of an offence relating to illegal game bird hunting loses both his game bird licence and his fur dealer's licence. Under the new subsection (1) the result would be that he would only lose his game bird licence.

Subsection (2) is redrafted to conform with the new subsection (1).

The new subsection (3) still authorizes the Minister to reinstate a licence or permit cancelled upon conviction except in the particular cases where he is prohibited from doing so in the new subsections (4) and (5).

The new subsections (4) and (5) are substituted for the existing subsections (4) to (7). The present subsection (7) has worked hardship in certain cases where, for instance, a fur dealer following a third conviction cannot receive a further licence thereby putting him out of business.

The new subsection (5) contains in essence the content of the present subsections (5) and (6).

Section 154 presently reads as follows:

"154. (1) A licence or permit issued under the authority of this Act and held by a person convicted of an offence under any of the provisions of this Act or the regulations shall upon such conviction be deemed to be cancelled without further action or notice.

(2) On conviction of any person for an offence under this Act or the regulations, the justice shall order that any licence or permit held by the person so convicted be turned in to him or to a constable or a game officer to be forwarded forthwith to the Department.

(3) The Minister may authorize the reinstatement of any such licence or permit so cancelled upon such terms as he deems just.

(4) Notwithstanding subsection (3), if the conviction is for an offence

(a) under section 74, or

(b) in respect of any beaver,

no such reinstatement shall be made during the period of one year immediately following the date of conviction.

(5) A fur dealer, tanner or furrier, who

(a) commits a second offence under section 74, or

(b) commits a second offence in respect of any beaver,

permanently forfeits, on summary conviction, any such licence so held by him, and his right to a further licence.

(6) Notwithstanding subsection (5), the fur dealer, tanner or furrier whose licence has been forfeited under subsection (5) may appeal to the Lieutenant Governor in Council, and the Lieutenant Governor in Council, if satisfied that the permanent forfeiture of such licence would work undue hardship or injustice, may reinstate such licence

(a) upon the expiration of one year from the date of conviction, and

(b) upon such terms as are deemed just.

(7) A fur dealer, tanner, furrier, fur farmer, guide, outfitter, or holder of a certificate of registration of a trapline shall on conviction for a third offence under this Act or the regulations, permanently forfeit any such licence so held by him and his right to a further licence."

24. Section 162 presently establishes a minimum \$50.00 fine in the case of offences under the sections enumerated there. The section is redrafted with the result that certain offences formerly carrying a \$50.00 minimum fine will now carry a minimum \$25.00 fine. The sections that will carry a \$25.00 minimum fine are section 5 (hunting without authority or without a licence), section 6 (hunting out of season or in a prohibited area), section 13 (hunting in a game preserve or bird sanctuary), and section 19 (illegal possession in relation to game birds or fur-bearing animals). Under section 162, subsection (1), clause (b) the minimum fine of \$50.00 is retained in the case of illegal possession of big game. Section 162 presently reads as follows:

"162. Any person who contravenes any of the provisions contained in sections 5, 6, 9, 13, 19, 21, 27, 30, 38, 46, 69, 79, 118 to 120, 153 or 155 is liable on summary conviction to a fine of not less than fifty dollars and not more than three hundred dollars, and in default of payment to imprisonment for a term not exceeding three months."

23. Section 154 is struck out and the following is substituted:

154. (1) Where any person is convicted of an offence against this Act or the regulations, a licence or permit issued to him pursuant to this Act or the regulations and in relation to which the offence was committed, is deemed to be cancelled upon the making of such conviction.

(2) Where a licence or permit is cancelled pursuant to subsection (1), the justice making the conviction shall order the person so convicted to forthwith deliver the licence or permit to a game officer or constable who shall thereupon forward it to the Director.

(3) Subject to subsections (4) and (5), the Minister may authorize the reinstatement of any licence or permit cancelled pursuant to subsection (1) upon such terms as he deems just.

(4) Where a licence or permit is cancelled pursuant to subsection (1) upon a conviction for an offence against section 74 or any provision of this Act or the regulations that relates to beaver or the pelts or skins of beaver,

(a) the Minister shall not authorize the reinstatement of the cancelled licence or permit, and

(b) no licence or permit of the same kind as that cancelled shall be issued to the person so convicted until the expiration of one year from the date of conviction.

(5) Notwithstanding subsection (4), where a fur dealer's licence, furrier's licence or tanner's licence is cancelled pursuant to subsection (1) upon a conviction for a third or successive offence against section 74 or any provision of this Act or the regulations that relates to beaver or the skins or pelts of beaver,

(a) the Minister shall not authorize the reinstatement of the cancelled licence, and

(b) no licence of the same kind as that cancelled shall be issued the person so convicted unless

(i) one year has expired from the date of the convictions, and

(ii) the Lieutenant Governor in Council consents to the issue of such licence.

24. Section 162 is struck out and the following is substituted:

162. (1) A person who contravenes the provisions of

(a) section 9, 21, 27, 30, 38, 46, 69, 79, 118 to 120, 153 or 155, or

(b) section 19 in relation to big game,

is liable on summary conviction to a fine of not less than fifty dollars and not more than three hundred dollars, and in default of payment to imprisonment for a term not exceeding three months.

(2) A person who contravenes the provisions of

25. The Schedule to the Act set out certain game preserves and bird sanctuaries. The Lieutenant Governor in Council has in addition to these designated other areas as game preserves and bird sanctuaries pursuant to section 125, subsection (1), clause (a) of the Act. It is felt that it would be desirable to have all game preserves and bird sanctuaries consolidated under one order in council.

- (a) section 5, 6 or 13, or
- (b) section 19 in relation to game birds or fur-bearing animals,

is liable on summary conviction to a fine of not less than twenty-five dollars and not more than three hundred dollars, and in default of payment to imprisonment for a term not exceeding three months.

25. The Schedule to the Act is struck out.

26. This Act comes into force on the day upon which it is assented to.

No. 86

FIFTH SESSION

THIRTEENTH LEGISLATURE

7 ELIZABETH II

1959

BILL

An Act to amend The Game Act

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. WILLMORE
