

2009 Bill 11

Second Session, 27th Legislature, 58 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 11

FISHERIES (ALBERTA) AMENDMENT ACT, 2009

MR. VANDERBURG

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 11
Mr. VanderBurg

BILL 11

2009

FISHERIES (ALBERTA) AMENDMENT ACT, 2009

(Assented to _____, 2009)

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

Amends RSA 2000 cF-16

1 The *Fisheries (Alberta) Act* is amended by this Act.

2 Section 1(1) is amended by adding the following after clause (e):

(e.1) “endangered species” means endangered species as defined in the *Wildlife Act*;

3 The following is added after section 28:

Forfeiture of seized fish, etc.

28.01(1) Where fish are seized and the person from whom they were seized has not been charged with an offence in relation to them and it can be shown that the fish were caught or possessed in contravention of this Act or the *Fisheries Act* (Canada), the fish, or any proceeds realized from their disposition, are to be considered forfeited to the Crown pending any application, or subsequent order, under section 28(4).

(2) Where any fish or other thing is seized under this Act, in the case of an offence for which a voluntary payment may be made under the *Provincial Offences Procedure Act*, the fishery officer or fishery guardian who issues the violation ticket shall

Explanatory Notes

- 1** Amends chapter F-16 of the Revised Statutes of Alberta 2000.
- 2** Adds definition.
- 3** Forfeiting seized fish and other things to the Crown.

give written notice to the defendant stating that if the defendant exercises the right to make the voluntary payment within the period of time set out in the violation ticket, the fish or thing, or any proceeds realized from its disposition, shall, on payment of the specified penalty and the applicable surcharge, be forfeited to the Crown.

(3) On payment of the specified penalty and the applicable surcharge within the required period of time as described in subsection (2), any fish or other thing that has been seized in relation to that offence is forfeited to the Crown.

4 The following is added after section 38:

Further and separate penalties and orders

38.1 Despite section 35, the court may, in addition to and separately from imposing any penalty under section 35 or any other provision of this Act, assess any penalty on or make any other order against a convicted person under any of sections 38.2 to 38.6.

Additional fine representing value of financial benefits

38.2 Where a person is convicted of an offence against this Act and the court is satisfied that as a result of the act or omission constituting the offence financial benefits accrued directly or indirectly to the person, the court may order the person to pay an additional fine in an amount that does not exceed the amount that the court finds to be the value of those benefits.

Additional powers of court to make directions

38.3 Where a person is convicted of an offence against this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order against the person containing any one or more of the following directions, which may contain any substance or conditions that the court considers appropriate:

- (a) to refrain from doing anything that may result in the continuation or repetition of the offence;

4 Adds 6 new sections dealing with creative sentencng.

- (b) to take action to remedy any harm to any fish or other organism or its habitat that resulted, or to avoid any such harm that may result, from the act or omission constituting the offence;
- (c) to publish the facts relating to the act or omission constituting the offence;
- (d) to pay money as compensation for the whole or part of the cost of any remedial or preventive action taken by or on behalf of the Minister as a result of the act or omission constituting the offence;
- (e) to perform community service;
- (f) to pay money for the purpose of promoting the proper management and control or conservation and protection of fish or endangered species, or both, or their habitats;
- (g) to submit to the Minister, on application to the court by the Minister within 3 years after the date of the conviction, information respecting the activities of the person in relation to matters within the scope of this Act;
- (h) to post a bond or pay money into court for the purpose of ensuring compliance with any direction under this section;
- (i) to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences against this Act;
- (j) that the person is ineligible to hold a licence of any particular kind or category for a period longer than the maximum period set out in section 35(3) and is to comply with any conditions related to obtaining or holding a licence that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences against this Act.

Recoverability of court-awarded financial penalty

38.4(1) Where the court makes an order under section 38.3(d) or (f) directing a person to pay money,

- (a) the money is to be paid for the benefit of the program or subprogram established by the Minister as the Minister considers most appropriate having regard to the nature of the offence, and
- (b) the amount due and any interest on it payable by law constitute a debt due to the Crown in trust for that program or subprogram and may be recovered as such.

(2) Where a person fails to comply with an order made under section 38.3(c), the Minister may publish the facts in question and recover the costs of publication from the person.

(3) Where the Minister incurs publication costs under subsection (2), the amount of the costs and any interest on it payable by law constitute a debt due to the Crown and may be recovered as such.

Variation of order

38.5(1) Where the court has made an order under section 38.3, the court may, on application to the court by the Crown or by the person to whom the order is directed, require the person to whom the order is directed to appear before it and, after hearing the person and the Minister of Justice and Attorney General, vary the order in any of the following ways that the court considers appropriate having regard to a change in the person's circumstances since the order was made:

- (a) by changing the order or any direction contained in it;
- (b) by relieving the person, either absolutely or partially or for any period that the court considers appropriate, from compliance with any direction contained in the order;
- (c) by extending or decreasing the period during which the order is to remain in effect.

(2) Where an application has been heard by the court under subsection (1), no other application may be made in respect of the same order except with the leave of the court.

Contravention following conviction and order

38.6 Where a person is convicted of an offence against this Act, is made subject to an order under section 38.3 and subsequently contravenes that order, that person is guilty of an offence against this section and is liable, with respect to that offence, to a penalty not exceeding the maximum penalty to which the person was liable for the original offence.

