

Oil and Gas Landmen Act
By the
Alabama Securities Commission

Article ____
Chapter ____
Sections ____

Short Title.

This article may be cited as the “Oil and Gas Landmen Act.”

Definitions.

When used in this article, unless the context otherwise requires, the following terms shall have the meanings respectively ascribed to them by this section:

- (1) Securities Commission. The Alabama Securities Commission.
- (2) Landman or Land Professional. A person who is engaged in any of the following activities in this state:
 - (a) Negotiating the acquisition or divestiture of mineral rights regarding the extraction of oil or gas, including wet gas;
 - (b) Negotiating business agreements that provide for the exploration for and/or development of oil or gas, including wet gas;
 - (c) Unitizing or securing the pooling of interests in oil or gas, including wet gas; or
 - (d) Managing rights and/or obligations derived from ownership of interests in minerals where contact with the property owner continues throughout the life of the lease, including but not limited to renewals, amendments, or extensions of the lease for mineral rights in oil or gas.
- (3) Mineral rights in oil or gas. The property rights that allow the holder of the rights to enter onto or under the property of another person for the extraction of crude oil, natural gas, or the constituents of crude oil or natural gas. The term mineral rights in oil or gas shall include, but not limited to, an oil or gas lease. The term gas whenever used in this article shall include wet gas.
- (4) Person. Such term shall include any natural person, whether operating, or transacting business, on his own behalf or in any capacity, to include but not limited to an agent, servant, employee, or independent contractor, or any other representative capacity.
- (5) Fraud, Deceit and Defraud. These terms are not limited to common-law deceit.

(6) *Applicant*. A person executing or submitting an application for registration.

(7) *Registrant*. An applicant for whom a registration has been declared effective by the Securities Commission.

Registration of oil and gas landmen.

(a) It is unlawful for any person to operate as a landman in this state unless he is first registered under this article. A landman shall also provide to the landowner evidence of current registration that the landman is registered under this article before contacting, negotiating, or obtaining any mineral rights in oil or gas from the landowner.

(b) A person shall register as a landman by submitting to the Securities Commission, or its designee:

(1) An initial registration application on the form required by the Securities Commission, along with a consent to service of process;

(2) An initial registration fee set by the Securities Commission; and

(3) An initial investigative fee set by the Securities Commission.

All fees collected by the Securities Commission under this article shall be deposited with the state treasurer and shall be set aside by the state treasurer in a separate fund designated for use of the Securities Commission in the administration and enforcement of this article.

(c) The Securities Commission shall assign a registration number and issue a registration certificate to each person that meets the requirements for registration under this article.

(d) Every registration expires December 31 unless renewed as hereinafter provided.

(e) Registration of a Landman may be renewed by filing with the Securities Commission, or its designee, prior to the expiration thereof, but no later than November 30 of the current license year, a renewal application and the prescribed renewal fee. The renewal application shall be on the form required by the Securities Commission. This form may contain such information as the Securities Commission may require to indicate any material change in the information contained in the original application or any renewal application for registration filed with the Securities Commission, or its designee, by the applicant.

(f) The Securities Commission may by order deny, suspend, or revoke any registration, or censor or bar any applicant or registrant from transacting business as an oil and gas Landman, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this state if the Securities Commission finds that the order is in the public interest and that the applicant or registrant:

(1) Has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstance under which it was made, false or misleading with respect to any material fact;

(2) Has willfully violated or willfully failed to comply with any provisions of this article, or any rule or order under this article;

(3) Has been convicted of any misdemeanor involving moral turpitude, or any felony;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the oil and gas industry;

(5) Is the subject of an order of the Securities Commission denying, suspending, or revoking registration as a Landman;

(6) Is the subject of any order relating to the financial industry, or issued by a regulatory agency in the financial industry;

(7) Is the subject of any order, adjudication, or determination entered within the past 10 years by any state or federal regulatory agency overseeing compliance of landmen or the oil and gas industry;

(8) Has engaged in dishonest or unethical practices while doing business in the oil and gas industry, or as a Landman;

(9) Has not complied with a condition imposed by the Securities Commission; or

(10) Has failed to pay the proper filing fee.

(g) The Securities Commission may by order summarily postpone or suspend registration pending a final determination of any proceeding under this article.

(h) If the Securities Commission finds that any registrant or applicant for registration is no longer in existence, has ceased to do business as a Landman, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Securities Commission may by order cancel the registration or application without notice of right to a hearing.

(i) Every registered Landman shall make and keep such accounts and other records as the Securities Commission by rule prescribes. All records so required shall be preserved for ten years unless the Securities Commission prescribes otherwise for particular types of records. The

Securities Commission may require that certain information be furnished or disseminated by a registrant as necessary or appropriate in the public interest or for the protection of lessor, landowner, beneficiary, or general public. To the extent determined by the Securities Commission in its discretion, information furnished to any lessor, client, landowner, or beneficiary in dealing with any activities regulated under this article and the rules thereunder may be used in whole or partial satisfaction of this requirement. All the records of any registrant are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commission, within or outside this state, as the commission deems necessary or appropriate in the public interest or for the protection of investors.

Registration of landmen -- Making, amending, and rescinding rules and prescribing forms by Securities Commission.

The Securities Commission shall adopt rules that:

- (1) Establish a registration form for the initial and renewal registration of landmen;
- (2) Establish fees for the issuance of an initial registration and investigation, and for a registration renewal;
- (3) Provide for the assignment of a registration number and the issuance of a registration certificate to each registered Landman; and
- (4) Establish any other requirements and procedures necessary to implement this article.

The Securities Commission may from time to time make, amend, and rescind such rules and prescribe such other forms as are necessary and desirable to carry out the provisions of this article. No rules or forms may be made or prescribed unless the Securities Commission finds that the action is necessary or appropriate in the public interest and consistent with the purposes fairly intended by the policy and provisions of this article. In prescribing rules and forms the Securities Commission may cooperate with regulatory agencies of the other states, federal agencies, and other groups, with a view to effectuating the policy of this article to achieve maximum uniformity in the form and content of the registration application and other documents and reports wherever practicable. All rules and forms of the Securities Commission shall be published.

Securities Commission to keep register; register to be open for public inspection.

The Securities Commission shall keep a register of all applications for registration which are or have ever been effective under this article and all denial, suspension, or revocation orders which have ever been entered under this article. The register shall be open for public inspection. The information contained in or filed with any application for registration may be made available to the public under such rules as the Securities Commission prescribes.

Registration of landmen — Applicability of provisions of article; consent to service of process on secretary of state.

The provisions of this article shall apply to persons who are engaging in the business of a Landman or transacting business as a Landman when:

(1) The landowner is located in Alabama;

(2) The real property which is the subject matter of the negotiations and the lease, is located in this state; or

(3) The Landman's principal place of business is located in this state.

Filing or registration not finding of truth, completeness, etc., of documents; representations concerning effect of registration or exemption.

(a) Neither the fact that an application for registration under this article has been filed, nor the fact that a person is effectively registered constitutes a finding by the Securities Commission that any document filed under this article is true, complete, and not misleading.

(b) No landman shall represent that a registration is a finding or an endorsement by the Commission that the quality of his or her services to be performed are greater than the quality of another landman.

(c) It is unlawful for a landman to make, or cause to be made, to any lessor, client, landowner, or beneficiary any representation inconsistent with this article.

Investigations and subpoenas by Securities Commission.

(a) The Securities Commission, in its discretion, may:

(1) Make such public or private investigations within or outside of this state as it deems necessary to determine whether any registration of a Landman should be granted, denied, or revoked, whether any person has violated or is about to violate any provision of this article or any rule or order hereunder, to aid in the enforcement of this article or in the prescribing of rules and forms hereunder;

(2) Require or permit any person to file a statement in writing, under oath, or otherwise as the Securities Commission may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(3) Publish information concerning any violation of this article or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this article, the Securities Commission or any officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers,

correspondence, memoranda, agreements, or other documents or records which the Securities Commission deems relevant or material to the inquiry.

(c) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction may issue, upon application by the Securities Commission, to that person an order requiring him to appear before the Securities Commission or the officer designated by it, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the Securities Commission or in obedience to the subpoena of the Securities Commission or any officer designated by it, in any proceeding instituted by the Securities Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Administrative cease and desist authority to Securities Commission; injunctive relief; appointment of receivers or conservators for defendants or defendants' assets; court ordered rescission, restitution, or disgorgement for violations.

Whenever it appears to the Securities Commission that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or any rule or order hereunder, it may, in its discretion, do either or both of the following:

(a) Issue a cease and desist order, with or without a prior hearing, against the person or persons engaged in the prohibited activities, directing them to cease and desist from engaging in the act or practice.

(b) Bring an action in its discretion in any court of competent jurisdiction to enjoin the act or practice and to enforce compliance with this article or any rule or order issued hereunder.

Upon a proper showing, a permanent injunction, temporary restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the Securities Commission, the court may enter an order of rescission, restitution, or disgorgement directed at any person who has engaged in an act constituting a violation of this article or any rule or order adopted or issued pursuant to this article. The Securities Commission shall not be required to post a bond.

Prohibited acts regarding the acquisition or divestiture of mineral rights in oil and gas.

It is unlawful for any person, in connection with the acquisition or divestiture of any mineral rights in oil or gas, or negotiating contracts or agreements for mineral rights in oil or gas, directly or indirectly, to:

(a) Employ any device, scheme, or artifice to defraud;

(b) Make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) Engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

Criminal penalties for violations of article; enforcement; scienter.

(a) A person that willfully violates subsection (a), (b), or (c) of Section _____ (*fraud section*), upon conviction, shall be guilty of a Class B felony. The limitations period for any prosecution under this section does not commence or begin to accrue until the discovery of the facts constituting the deception, after which the prosecution shall be commenced within five years.

(b) A person who willfully violates Section _____ (*registration section*), upon conviction, shall be guilty of a Class A misdemeanor. A person who willfully violates any provision of this article, other than those noted in subsection (a), or a rule adopted or order issued under this article, upon conviction, shall be guilty of a Class A misdemeanor.

(c) The enforcement of the provisions of this article shall be vested in the Securities Commission. It shall be the duty of the Securities Commission to see that its provisions are at all times obeyed and to take such measures and to make such investigations as will prevent or detect the violation of any provision thereof. The Securities Commission shall at once notify the district attorney of the proper county any evidence which shall come to its knowledge of criminality under this article. The Securities Commission shall be authorized to proceed therein with all the rights, privileges, and powers conferred by law upon district or court attorneys including the power to appear before grand juries and to interrogate witnesses before such grand juries.

(d) Nothing in this article limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

(e) In any proceeding under this article, scienter need not be alleged and proved in prosecutions in the failure to register as a Landman under this article.

Civil liabilities of sellers, agents, etc.; remedies of purchasers.

(a) Any person who:

(1) Is engaged in the business of acquisition or divestiture of any mineral rights in oil or gas, or in negotiating contracts or agreements for mineral rights in oil or gas, in

violation of any provision of this article or of any rule or order imposed under this article or of any condition imposed under this article, or

(2) Is engaged in the business of acquisition or divestiture of any mineral rights in oil or gas, or in negotiating contracts or agreements for mineral rights in oil or gas, by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the lessor or landowner not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission, is liable to the lessor or landowner who may bring an action to recover any losses and damages incurred as a result of the leasing of the mineral rights to the property, together with interest at six percent per year from the date of the agreement, court costs and reasonable attorneys' fees.

(b) Every person or entity who directly or indirectly controls a person liable under subsections (a) of this section, including every employee of such a person or entity who materially aids in the conduct giving rise to the liability, and every landman or land professional who materially aids in such conduct is also liable jointly and severally with and to the same extent as the person liable under subsections (a), unless he is able to sustain the burden of proof that he or she did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(c) Every cause of action under this section survives the death of any person who might have been a plaintiff or defendant.

(d) No person may obtain relief under this section in an action involving the failure to register unless suit is brought within two years from when the lease agreement for oil or gas mineral rights was entered. All other actions for relief under this section must be brought within the latter of six years from the date of the lease agreement or two years after the date of discovery giving rise to the cause of action.

(e) No person who has made or engaged in the performance of any contract in violation of any provision of this article or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any action on the contract.

(f) Any condition, stipulation, or provision binding any person acquiring any rights under this article to waive compliance with any provision of this article or any rule or order hereunder is void.

(g) The rights and remedies provided by this article are in addition to any other rights or remedies that may exist.

(h) (1) The Securities Commission may by order, if it finds such order to be in the public interest, impose an administrative assessment upon any person who violates any provision of this article or any rule or order issued under this article.

(2) Any administrative assessment imposed under this section shall not exceed \$50,000 for each act or omission that constitutes the basis for an order issued under this article.

(3) For the purposes of determining the amount or extent of an administrative assessment, if any, to be imposed under this section, the Securities Commission shall consider among other factors, the frequency, persistence, and willfulness of the conduct constituting a violation of any provision of this article or any rule or order issued under this article, and the number of persons adversely affected by the conduct.

(4) The administrative assessment under this section is in addition to any other penalty, remedy, or sanction that may be imposed under this article.

(i) The Securities Commission may charge, in addition to any administrative assessment, fine, penalty, remedy, or sanction imposed under this article, the cost of any investigation resulting from any violation of any provision of this article or any violation of any rule or order issued under this article or the cost of any examination made by the Securities Commission pursuant to this article, to the party or parties subject to such investigation or examination. Such charge may include, but is not limited to, a per diem prorated upon the salary cost of any employee, or person acting on behalf, of the Securities Commission together with actual travel, housing and any and all other reasonable expenses incurred as a result of such investigation or examination.

(j) All assessments in subsections (h) and (i) will first be applied to the fund designated for oil and gas landmen regulation in the state treasury to be drawn upon by the Securities Commission to cover the costs incurred in administering this article.

Securities Commission authorized to swear out warrants of arrest; liability of Securities Commission for warrant.

The Securities Commission is authorized and empowered to swear out warrants of arrest against any person violating the criminal provisions of this article, and it shall not be liable in damages or to an action for damages by reason of swearing out warrants or for causing the arrest and detention or imprisonment of any person or persons under such warrant or warrants.

Duties of Securities Commission; director empowered to swear out warrants of arrest; liability of director for warrant.

The Director of the Securities Commission shall keep the records of the Securities Commission with regards to this article, and generally perform such duties as the Securities Commission may direct. The director shall be authorized and empowered to swear out warrants of arrest against any person violating the criminal provisions of this article. He shall not be liable in damages or to an action for damages by reason of swearing out such warrant or warrants or for

causing the arrest, detention, or imprisonment of any person or persons under such warrant or warrants.

Liability for acts done or omitted in good faith under rules, forms, or orders.

No provision of this article imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the Securities Commission, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Hearings to be public; requests for private hearings.

Every hearing in an administrative proceeding shall be public unless the Securities Commission, in its discretion, grants a request joined in by all the respondents that the hearing be conducted privately.

Document deemed filed when received.

A document is deemed filed when it is marked received by the Securities Commission.

Securities Commission to furnish copies of register entries or documents; certified copy deemed prima facie evidence.

Upon request and at such reasonable charges as it prescribes, the Securities Commission shall furnish to any person photo static or other copies, certified under its seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this article, any copy so certified is prima facie evidence of the contents of the entry or document certified.

Interpretative opinions by Securities Commission.

(a) The Securities Commission, in its discretion, may honor requests from interested persons for interpretative opinions and no-action letters.

(b) Any person who makes application to the Securities Commission for an interpretative opinion or no-action letter shall be assessed a non-refundable filing fee as prescribed by Securities Commission rule. Fees collected under this section shall be deposited in the fund designated for oil and gas landmen regulation in the state treasury to be drawn upon by the Securities Commission for its use in the administration of this article.

Securities Commission may issue warnings to public and publish information regarding orders.

The Securities Commission may issue and give warnings to the public concerning Landmen in the oil and gas industry doing business in this state and may in its discretion cause to

be published information regarding any orders or rules issued by the Securities Commission in the implementation of its duties, including, without limitation, information pertaining to specific orders denying registration or prohibiting the sale of securities.

Party aggrieved by order entitled to hearing before Securities Commission; appeals from action of Securities Commission.

(a) Any person aggrieved by an order issued under this article shall be entitled to a hearing pursuant to the provisions of the Alabama Administrative Procedure Act (Section 41-22-1 et seq.) pertaining to "contested cases," if such person, within 28 days after delivery of the order, submits a written request for a hearing before the Securities Commission. The order shall disclose the right to a hearing upon written request within 28 days after delivery of the order. If no timely request for a hearing is made, the order shall constitute a final order of the Securities Commission.

(b) Any appeal from any final order of the Securities Commission shall be made to the circuit court of Montgomery County and shall be governed by the provisions of the Alabama Administrative Procedure Act pertaining to judicial review.

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