

1968 Bill 105

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First Session, 16th Legislature, 17 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

## **BILL 105**

**An Act to Provide for the Licensing of Landmen**

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THE MINISTER OF MINES AND MINERALS

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First Reading .....

Second Reading .....

Third Reading .....

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# BILL 105

1968

## An Act to Provide for the Licensing of Landmen

(Assented to \_\_\_\_\_, 1968)

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

1. This Act may be cited as *The Landmen Licensing Act*.

2. In this Act,

- (a) "chairman" means the chairman of a committee;
- (b) "committee" means an investigating committee established under section 15;
- (c) "interest in land" means any estate or interest in land that, in the absence of an agreement with the owner, may be acquired by an order under
  - (i) *The Right of Entry Arbitration Act*, or
  - (ii) *The Expropriation Procedure Act*, or
  - (iii) any other Act of the Province providing for expropriation of land,by the person on whose behalf a landman is negotiating for or acquiring the estate or interest;
- (d) "landman" means
  - (i) a person who
    - (A) on behalf of his employer, or
    - (B) as an agent on behalf of another person, or
    - (C) on his own behalf,negotiates for or acquires an interest in land, or
  - (ii) a person who gives or offers advice to an owner, or his agent, with respect to a negotiation or acquisition referred to in subclause (i);
- (e) "licence" means a licence granted under this Act;
- (f) "Minister" means the member of the Executive Council charged with the administration of this Act;
- (g) "owner" means
  - (i) a person registered in the land titles office as the owner of an estate in fee simple in the surface of land, or

## **Explanatory Notes**

**1. General.** This Bill provides for the registration and licensing of landmen and investigations into complaints arising from the activities of landmen. The name landman includes a person ordinarily known or referred to as right of way buyer, lease agent, petroleum landman or by some other similar designation. It is intended to apply to all persons who are engaged, whether full time or part time, in negotiations for, acquisitions of, or the giving or offering of advice respecting negotiations for or acquisitions of interests in the surface of land required for drilling and mining operations, the laying of pipe lines, construction of power lines, the building of highways and roads and any other purpose for which the interest, in the absence of an agreement with the surface owner, may be acquired by expropriation.

**2. Definitions.**

- (ii) a person who is shown by the records of the land titles office as having a particular estate or an interest in the surface of land, or
  - (iii) any other person who is in possession or occupation of the surface of land, or
  - (iv) in the case of Crown land, a person shown on the records of the Department administering the land as having an estate or interest in the surface of land,
- but does not include the Crown;
- (h) "prescribed" means prescribed by the regulations;
  - (i) "registrar" means the employee in the Minister's Department appointed by the Minister as Registrar of Landmen.

**3. This Act does not apply**

- (a) to a barrister or solicitor in the regular practice of his profession, or
- (b) to a member of a municipal council who, for or on behalf of a municipality in which he holds office, negotiates for an interest in land within the boundaries of the municipality, or
- (c) to a person employed or engaged by a city, town or village, for or on its behalf, to negotiate for an interest in land required by it within its boundaries, or
- (d) to a Minister of the Crown or his deputy, or
- (e) where negotiations for an interest in land are conducted by correspondence, telephone or telegraph.

**4. (1) Unless he is the holder of a subsisting licence, no person shall**

- (a) engage in the activities of a landman, or
- (b) advertise himself or hold himself out as a landman in any way or by any means, or
- (c) act in such a manner as to create or induce in the mind of any reasonable person the belief that he is authorized to act as a landman.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$500 and in default of payment to imprisonment for a term not exceeding six months.

(3) A person who is convicted of a second or subsequent offence pursuant to subsection (2) may, in addition to or in lieu of any other penalties, be sentenced to imprisonment for a term not exceeding 12 months.

**5. (1) An application for a licence shall be made to the registrar in the prescribed form and shall be accompanied by the prescribed fee.**

**3. Exemptions from application of Act.**

**4. Licence required.**

**5. Licensing procedure.**

(2) The registrar may make whatever inquiry and investigation he considers necessary regarding an applicant for licence and may issue the licence applied for or he may refuse to issue a licence where in his opinion that action is in the public interest.

(3) When the issue of a licence is refused the applicant may appeal the decision to the Minister whose decision thereon is final.

**6.** (1) A licence terminates five years from its date of issue unless it is suspended or cancelled and may be renewed for additional periods of five years each upon payment of the prescribed renewal fee.

(2) Notwithstanding subsection (1), upon the request of an applicant the registrar may issue a temporary licence for a limited period of time but not exceeding one year.

**7.** (1) Where the employer of a landman changes, the landman shall forthwith inform the registrar in writing of the name and address of his new employer.

(2) When a landman changes his business address he shall forthwith inform the registrar in the prescribed form.

**8.** (1) Where negotiations to acquire an interest in land are entered into by a landman, he shall

- (a) leave with the owner of the interest, or his agent, a copy of the proposed agreement to acquire the interest, with the landman's name and business address endorsed thereon or attached thereto, and
- (b) at the time he leaves the copy, inform the owner, or his agent, of the provisions of this section.

(2) A period of 48 hours shall be allowed to elapse after the copy of the proposed agreement is left with the owner, or his agent, before the same or any other landman

- (a) resumes negotiations with, or
- (b) accepts a signed agreement from

the owner, or his agent, with respect to the interest in land.

(3) No portion of a Sunday or other holiday shall be included in determining the 48-hour period referred to in subsection (2).

(4) If this section is complied with once in the course of the negotiations, it is not necessary to again comply with it because of any changes or variations negotiated in the terms and conditions of the proposed agreement.

(5) An owner, or his agent, may waive the application of this section by signing a waiver in the prescribed form.

**9.** Where any person is aggrieved by a landman with respect to

**6.** Term of licence and temporary licence.

**7.** Change of address.

**8.** Negotiations controlled.

**9.** Complaints against landmen.

- (a) negotiations for or the acquisition of an interest in land, or
- (b) advice given or offered respecting negotiations or acquisitions,

the person may within 60 days of the date of the cause of his grievance, file a complaint in the prescribed form with the registrar.

**10.** (1) Upon receipt of a complaint under section 9, the registrar shall cause to be served on the landman and the person on whose behalf he was negotiating

- (a) a copy of the complaint, and
- (b) a notice requiring the landman within 14 days from the date of service of the notice to file with the registrar a reply in the prescribed form.

(2) The registrar, where in his opinion an extension of the period referred to in clause (b) of subsection (1) is warranted, may from time to time extend the period.

**11.** (1) If within the period allowed under section 10, the landman does not file the reply, the registrar shall suspend his licence.

(2) The suspension of a licence under subsection (1) terminates upon

- (a) the dismissal of the complaint under section 13 or 16, or
- (b) the filing of a decision with respect to the complaint under section 20.

**12.** (1) Upon the expiration of the period allowed under section 10, the registrar shall cause to be served on the complainant

- (a) a copy of the landman's reply or advice to the effect that the landman did not file a reply, and
- (b) a notice stating that unless within a period of 14 days from the date of service of the notice the complainant files with the registrar a request for hearing in the prescribed form, the complaint will be dismissed.

(2) The registrar, where in his opinion an extension of the period referred to in clause (b) of subsection (1) is warranted, may from time to time extend the period.

**13.** If within the period allowed under section 12 the complainant does not file the request for hearing, the registrar shall dismiss the complaint and notify the complainant and the landman accordingly.

**14.** If within the period allowed under section 12 the complainant files the request for hearing, the registrar



**10.** Notice of complaint to landman.

**11.** Failure of landman to reply to complaint.

**12.** Notice to complainant where landman replies to complaint.

**13.** Failure of complainant to request a hearing.

**14.** Request for hearing.

shall forward to the chairman of the investigating committee for the complaint,

- (a) the complaint,
- (b) the reply, if any, and
- (c) the request for hearing.

**15.** (1) The investigating committee for a complaint shall consist of three members, being

- (a) a judge of a district court appointed by the Minister, who shall be the chairman,
- (b) the person appointed by the complainant in the filed complaint, and
- (c) the person appointed by the landman in the filed reply.

(2) When a vacancy occurs in the membership of an investigating committee because

- (a) the landman failed to file the reply, or
- (b) a member is unable or refuses to act,

the Minister shall appoint a member to fill the vacancy.

(3) No person shall be appointed or shall act as a member of an investigating committee if

- (a) he has an interest in the land involved in the complaint, or
- (b) he is employed by the same employer as the landman.

**16.** (1) Upon receipt of the documents referred to in section 14 the chairman, if of the opinion that the complaint is frivolous or vexatious,

- (a) may dismiss the complaint, and
- (b) shall notify the registrar, the complainant and the landman accordingly,

but otherwise the chairman shall

- (c) fix the date, time and place of a hearing, and
- (d) cause the complainant, the landman and the other members of the committee to be served with notice of the hearing.

(2) The hearing shall be held within 30 days after receipt by the chairman of the documents referred to in section 14 or within such longer time as the chairman may allow, and shall be held in private.

**17.** (1) At the hearing

- (a) the complainant and the landman have the right
  - (i) to be represented by counsel, and
  - (ii) to cross-examine witnesses,and
- (b) testimony presented
  - (i) shall be under oath, and

**15. Investigating committee.**

**16. Duty of chairman of committee on receiving request for hearing.**

**17. Conduct of hearings.**

(ii) may, in the discretion of the chairman, be in the form of statutory declarations.

(2) The committee is not bound by the rules of law concerning evidence.

(3) For the purpose of any hearing, the chairman has all the powers of a commissioner appointed under *The Public Inquiries Act*.

(4) A witness may be examined on oath on all matters relevant to the investigation and shall not be excused from answering any question on the ground that the answer

(a) might tend to criminate him, or

(b) might subject him to punishment under this Act, or

(c) might tend to establish his liability

(i) to a civil proceeding at the instance of the Crown or of any person, or

(ii) to prosecution under any statute,

but the answer so given, if it is such as tends to criminate him, shall not be used or received against him in any civil proceedings or in any proceedings under any other Act of the Province.

(5) A hearing before a committee may be adjourned from time to time as circumstances require.

(6) A decision of a majority of the committee is the decision of the committee.

**18.** (1) Where the committee decides that the complaint is not proven, the committee shall dismiss the complaint.

(2) Where the committee decides that the complaint is proven in whole or in part, the chairman, in his discretion, shall

(a) direct the registrar to suspend the landman's licence for a specified period, or

(b) direct the registrar to cancel the landman's licence, or

(c) in lieu of or in addition to the suspension or cancellation of the licence, direct the landman to pay a penalty not exceeding \$500 within a specified period.

(3) A person who fails to pay a penalty he is directed to pay under subsection (2) within the time allowed by the chairman is guilty of an offence and liable on summary conviction to a fine of not more than \$200 and in default of payment to imprisonment for a term not exceeding 90 days.

**19.** (1) The chairman may, in his discretion, fix the costs of and incidental to the hearing and direct by whom and to whom they are payable.

**18.** Powers of committee and chairman at hearing.

**19.** Costs of hearing.

(2) Where a penalty is directed to be paid under section 18 the whole or any part thereof may be applied to payment of costs fixed under subsection (1).

(3) The penalty or any part thereof not applied to the payment of costs shall be paid to the Provincial Treasurer to the credit of the General Revenue Fund.

(4) Where the party responsible for payment of costs fails to make payment within 15 days after the chairman's decision is served upon him, the Minister may direct the Provincial Treasurer to pay out of the General Revenue Fund the costs to which each person is entitled.

(5) A payment made by the Provincial Treasurer under subsection (4) constitutes a debt payable to the Crown by the party responsible for payment of costs.

**20. (1) A decision**

(a) of a committee made pursuant to section 18, or

(b) of a chairman made pursuant to section 18 or 19, shall be in writing prepared and signed by the chairman.

(2) The decision of the committee and the chairman shall be filed with the registrar and thereupon the registrar shall serve copies thereof on

(a) the complainant,

(b) the landman, and

(c) the person on whose behalf the landman was negotiating.

(3) Where the decision of the chairman directs the suspension or cancellation of the licence of the landman, the registrar shall suspend or cancel the licence accordingly.

**21.** Either party aggrieved by a decision of the committee or of the chairman may, within 60 days of the date on which the decision is served upon him, by leave of a judge thereof, appeal to the Trial Division of the Supreme Court of Alberta.

**22. (1)** The judge hearing the appeal may affirm, vary or reverse the decision appealed.

(2) The clerk of the court shall file the judge's decision with the registrar and thereupon the registrar shall serve copies thereof on

(a) the complainant,

(b) the landman, and

(c) the person on whose behalf the landman was negotiating.

(3) Where the decision of the judge directs the suspension, cancellation or reinstatement of a licence, the registrar shall suspend, cancel or reinstate the licence accordingly.

**20.** Decision of chairman and committee to be in writing and served on the complainant and landman.

**21.** Appeal from decision of committee or chairman.

**22.** Powers of judge on appeal.

**23.** No proceeding under this Act before the committee or with respect to an appeal shall be deemed invalid for informality, if there has been substantial compliance with the requirements of the Act.

**24.** Where a licence is suspended or cancelled the landman shall forthwith return the licence to the registrar.

**25.** Any notice or other document required to be served under this Act or the regulations may be served by

(a) delivery to, or

(b) registered mail addressed to

the person upon whom it is required to be served at his last known address.

**26.** No agreement under which an interest in land is acquired is invalidated or in any way affected by any failure to comply with this Act or the regulations.

**27.** A prosecution under this Act may be commenced within two years from the date on which the offence is alleged to have been committed, but not thereafter.

**28.** A certificate purporting to be signed by the registrar and stating that on a specified date or during a specified period of time

(a) the person named in the certificate was or was not the holder of a subsisting licence, or

(b) the licence of the person named in the certificate was suspended or cancelled,

shall be admitted in evidence as *prima facie* proof of the facts stated therein, without proof of the signature or appointment of the registrar.

**29.** A person licenced under this Act is not required to be licensed under *The Real Estate Agents' Licensing Act* with respect to his activities as a landman.

**30.** The Lieutenant Governor in Council may make regulations:

(a) prescribing the fees to be paid on applications for licences and renewals of licences;

(b) prescribing forms to be used under this Act;

(c) establishing standards of conduct for landmen in activities to which this Act applies;

(d) respecting any other matter necessary or desirable to carry out the intent of this Act.

**31.** (1) This Act, except subsection (2) of section 4, comes into force on July 1, 1968.

(2) Subsection (2) of section 4 comes into force on October 1, 1968.



**23.** Proceedings at hearing or on appeal not invalid for informality.

**24.** Return of suspended or cancelled licence.

**25.** Service of documents under Act.

**26.** Validity of executed agreements.

**27.** Limitation of time on prosecution.

**28.** Evidence by certificate.

**29.** Application of The Real Estate Agents' Licensing Act.

**30.** Regulations.