

H. B. 4347

(By Delegates Manypenny, Doyle, Walker and Shaver)

[Introduced January 30, 2012; referred to the

Committee on Energy, Industry and Labor, Economic Development and
Small Business then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §36-3-8a, relating to
requiring persons who are not members of the American
Association of Professional Landmen to have two years or more
of experience in contracting for oil and gas leases before
being able to represent lessors in the exploration or
development of natural gas in the Marcellus Shale geologic
formation; requiring those persons to also successfully
complete an ethics class; making findings; defining a term;
and establishing penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §36-3-8a, to read as
follows:

ARTICLE 3. FORM AND EFFECT OF DEEDS AND CONTRACTS.

1 **§36-3-8a. Qualifications of persons taking leases in the Marcellus**
2 **Shale geologic formation; findings; definition;**
3 **penalties.**

4 (a) Findings. --

5 (1) A quality landman can have as much effect on the
6 profitability of the oil and gas venture as either a geologist or
7 engineer. Any mistake by the landman can expose the oil and gas
8 producer to various lawsuits or reduce the profitability of the
9 property due to poor negotiation tactics.

10 (2) Most oil and gas landmen spend a tremendous amount of time
11 in county courthouses searching through the real property records
12 to determine the mineral ownership in various properties. This
13 process can be very tedious and requires a firm understanding of
14 state real property law. Tens of thousands of dollars may be spent
15 in leasing based on the landman's final report of the mineral
16 ownership of the properties.

17 (3) Once the title ownership is determined into the oil and
18 gas properties, it is the landman's responsibility to contact the
19 various mineral owners to execute oil and gas leases. The landman
20 has to have a solid understanding of oil and gas law at this point
21 because more often than not the negotiations are with the mineral
22 owner's attorneys. Virtually every oil and gas lease tends to be a
23 custom document tailored to the individual concerns of the mineral
24 owner. This is a critical phase of the process because the bonus

1 consideration for executing the lease and the royalties paid on
2 production are negotiated at this point.

3 (4) During and after the title search process the landman may
4 be required to cure title defects by drafting and executing various
5 agreements including affidavits, ratifications and use and
6 possession. The primary role of the landman at this stage is to
7 help reduce the title risk associated with the ownership of the
8 respective producer into the leases taken on the property.

9 (5) Landman are involved at virtually every other level of the
10 development process of oil and gas ventures. They may be called
11 upon to unitize or pool various mineral interests into a production
12 unit, divestiture negotiations, leasehold due diligence and general
13 management and maintenance activities.

14 (6) Most new landmen are challenged by the fact that they have
15 to be an analyst, manager, salesman and negotiator all at the same
16 time. It takes a very self motivated individual to wear of all
17 these hats one time.

18 (b) Definition. -- For purposes of this section "landman" is
19 a land professional who has been primarily engaged in negotiating
20 for the acquisition or divestiture of mineral rights or negotiating
21 business agreements for exploring for or development of minerals.

22 (c) Requirements. -- A landman who is not a member in good
23 standing with the American Association of Professional Landmen
24 shall have at least two years experience in negotiating for the

1 acquisition or divestiture of mineral rights or negotiating
2 business agreements for exploring for or development of minerals
3 and to have successfully completed an ethics class for landmen
4 before he or she may represent lessors in taking leases for the
5 exploration or development of natural gas in the Marcellus Shale
6 geologic formation.

7 (d) Penalties. -- Any person who violates subsection (c) of
8 this section, fails to disclose significant information to a
9 landowner or coerces or makes fraudulent representations to a
10 landowner when securing a lease for the exploration of natural gas
11 in the Marcellus Shale geologic formation is guilty of a
12 misdemeanor and, upon conviction of a first offense shall be fined
13 not less than \$1,000 nor more than \$3,000; upon conviction of a
14 second offense, shall be fined not less than \$2,000 and not more
15 than \$4,000; and upon conviction of a third or subsequent offense
16 thereof shall be fined not less than \$3,000 and not more than
17 \$5,000.

NOTE: The purpose of this bill is to require persons who are not members of the American Association of Professional Landmen to have two years or more of experience in contracting for oil and gas leases before being able to represent lessors in the exploration or development of natural gas in the Marcellus Shale geologic formation. The bill also requires those persons to also successfully complete an ethics class. The bill further makes findings, defines a term and establishes penalties.

This section is new; therefore, it has been completely underscored.