

# STATE OF NEW YORK

8666

## IN SENATE

May 10, 2018

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to licensing requirements for energy aggregators, brokers and consultants

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public service law is amended by adding a new article 12 to read as follows:

### ARTICLE 12

#### AGGREGATORS, BROKERS AND CONSULTANTS

##### Section 240. Definitions.

241. Acting without a license.

242. Energy aggregator, energy broker and energy consultant; licensing.

243. Penalties for violations.

244. Disclosure of compensation.

245. Rebates prohibited.

§ 240. Definitions. For the purposes of this article, the following terms shall have the following meanings unless the context indicates otherwise:

1. "Broker compensation" is any payment made to an energy broker, energy aggregator or energy consultant for the purposes of securing or procuring energy for the end-use customer.

2. "Customer disclosure label" means the statement an energy service company must provide a customer with whom it enters into a sales agreement pursuant to the rules and regulations of the commission.

3. "Energy aggregator" means any person that arranges the sale of retail electricity or electric-related services or retail natural gas supply or natural gas-related services between government aggregators or private aggregators and electric power suppliers or natural gas suppliers, but does not take title to the electric or gas sold.

4. "Energy broker" means an entity that assumes the contractual and legal responsibility for the sale of electric generation service, trans-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD15893-01-8

1 mission or other services to end-use retail customers, but does not take  
2 title to any of the power sold, or an entity that assumes the contractu-  
3 al and legal obligation to provide natural gas supply service to end-use  
4 retail customers, but does not take title to the natural gas.

5 5. "Energy consultant" means any person, firm, association or corpo-  
6 ration who acts as broker in soliciting, negotiating or advising any  
7 electric or natural gas contract, or acts as an agent in accepting any  
8 electric or natural gas contract on behalf of an ESCO.

9 6. "Energy service company" or "ESCO" means an entity eligible to sell  
10 electricity and/or natural gas to end-use customers using the trans-  
11 mission or distribution system of a utility corporation. ESCO may be  
12 referred to herein as electric power suppliers or natural gas suppliers.

13 § 241. Acting without a license. 1. (a) No person, firm, association  
14 or corporation shall act as an energy aggregator, energy broker or ener-  
15 gy consultant in this state without having authority to do so by virtue  
16 of a license issued and in force pursuant to the provisions of this  
17 article.

18 (b) Any person, firm, association or corporation who or which acts as  
19 an energy aggregator, energy broker or energy consultant in violation of  
20 paragraph (a) of this subdivision shall, in addition to other penalties  
21 prescribed by law, be subject to a penalty not to exceed five thousand  
22 dollars for each transaction.

23 2. Unless licensed as an energy aggregator, energy broker or energy  
24 consultant, no person, firm, association or corporation shall in this  
25 state identify or hold himself or itself out to be an energy aggregator,  
26 energy broker or energy consultant.

27 3. No person shall accept any commission, service fee, brokerage or  
28 other valuable consideration for selling, soliciting or negotiating an  
29 energy contract in this state if that person is required to be licensed  
30 under this article and is not so licensed, unless stated otherwise here-  
31 in.

32 4. Every licensee shall notify the commission upon changing his, her  
33 or its legal name.

34 § 242. Energy aggregator, energy broker and energy consultant; licens-  
35 ing. 1. The commission may issue a license to any person, firm or corpo-  
36 ration who or which has complied with the requirements of this article,  
37 authorizing such licensee to act as an energy aggregator, energy broker  
38 or energy consultant provided that such: (i) energy broker demonstrates  
39 financial accountability as evidenced by a bond or other method of  
40 financial accountability in an amount not less than one hundred thousand  
41 dollars; and (ii) energy aggregator or energy consultant demonstrates  
42 financial accountability as evidenced by a bond or other method of  
43 financial accountability in an amount not less than fifty thousand  
44 dollars.

45 2. Any such license issued to any person, firm or corporation shall  
46 authorize only the officers, directors and employees thereof to act  
47 individually as energy aggregators, energy brokers and energy consult-  
48 ants, as applicable, thereunder. In addition, a person or entity that is  
49 a contractor in an exclusive relationship with a single licensee may  
50 also act under that licensee's license. Such licensee shall be held  
51 accountable for the actions of the exclusive contractor.

52 3. Before any original energy aggregator, energy broker, or energy  
53 consultant license is issued there shall be on file with the commission  
54 an application by the prospective licensee in such form or forms and  
55 supplements, containing information the commission prescribes, and meet-  
56 ing eligibility standards the commission sets forth.

1 4. The commission may refuse to issue any applicant license if, in the  
2 commission's judgment, the proposed licensee is not trustworthy and  
3 competent to act as such a licensee, or has given cause for the revoca-  
4 tion or suspension of such a license, or has failed to comply with any  
5 prerequisite for the issuance of such license.

6 5. Each license applicant shall annually pay the commission a five  
7 hundred dollar licensing fee.

8 § 243. Penalties for violations. 1. The commission may in any one  
9 proceeding, by order, require the licensee to pay to the people of this  
10 state a penalty in a sum not exceeding one thousand dollars for each  
11 offense, and a penalty in a sum not exceeding one million dollars in the  
12 aggregate for all offenses.

13 2. Upon the failure of such a licensee to pay such penalty ordered  
14 pursuant to subdivision one of this section within twenty days after the  
15 mailing of such order, postage prepaid, registered, and addressed to the  
16 last known place of business of such licensee, unless such order is  
17 stayed by an order of a court of competent jurisdiction, the commission  
18 may revoke the license of such licensee or may suspend the same for such  
19 period as he or she determines.

20 3. The commission shall retain the authority to enforce the provisions  
21 of and impose any penalty or remedy authorized by this chapter against  
22 any person or entity who is under investigation for or charged with a  
23 violation of this chapter, even if the person's or entity's license or  
24 registration has been surrendered, or has expired or has lapsed by oper-  
25 ation of law.

26 4. In addition to any penalty ordered pursuant to this section, the  
27 commission may refuse to renew, revoke, or may suspend for a period the  
28 commission determines the license of any energy aggregator, energy  
29 broker, and energy consultant if, after notice and hearing, the commis-  
30 sion determines that the licensee has:

31 (a) violated any applicable public service laws, or violated any  
32 applicable regulation, subpoena or order of the commission or of another  
33 state's public service law, or has violated any law in the course of his  
34 or her dealings in such capacity;

35 (b) provided materially incorrect, materially misleading, materially  
36 incomplete or materially untrue information in the license application;

37 (c) obtained or attempted to obtain a license through misrepresen-  
38 tation or fraud;

39 (d)(i) used fraudulent, coercive or dishonest practices;

40 (ii) demonstrated incompetence;

41 (iii) demonstrated untrustworthiness; or

42 (iv) demonstrated financial irresponsibility in the conduct of busi-  
43 ness in this state or elsewhere;

44 (e) improperly withheld, misappropriated or converted any monies or  
45 properties received in the course of business in this state or else-  
46 where;

47 (f) intentionally misrepresented the terms of an actual or proposed  
48 energy supply contract;

49 (g) admitted or been found to have committed any unfair energy trade  
50 practice or fraud;

51 (h) forged another's name to an application for an energy contract or  
52 to any document related to an energy supply transaction;

53 (i) knowingly accepted energy supply business from an individual who  
54 is not licensed; or

55 (j) ceased to meet the requirements for licensure under this article.

1 5. Before revoking or suspending the license of any energy aggregator,  
2 energy broker, or energy consultant license the commission shall, except  
3 when proceeding pursuant to subdivision six of this section, give prior  
4 written notice to the licensee and shall hold, or cause to be held, a  
5 hearing not less than ten days after the giving of such notice.

6 6. (a) No individual, corporation, firm or association whose license  
7 as an energy aggregator, energy broker, or energy consultant or other  
8 licensee subject to subdivision one of this section whose license has  
9 been revoked, and no firm or association of which such individual is a  
10 member, and no corporation of which such individual is an officer or  
11 director, shall be entitled to obtain any license under the provisions  
12 of this article for a period of one year after such revocation, or, if  
13 such revocation be judicially reviewed, for one year after the final  
14 determination thereof affirming the action of the commission in revoking  
15 such license.

16 (b) If any such license held by a firm, association or corporation be  
17 revoked, no member of such firm or association and no officer or direc-  
18 tor of such corporation shall be entitled to obtain any such same  
19 license, for the same period of time, unless the commission determines,  
20 after notice and hearing, that such member, officer or director was not  
21 personally at fault in the matter on account of which such license was  
22 revoked.

23 7. A licensee subject to this article shall report to the commission  
24 any legal or administrative action taken against the licensee in another  
25 jurisdiction or by another governmental agency in this state within  
26 thirty days of the final disposition of the matter. This report shall  
27 include a copy of the order, consent to order or other relevant legal  
28 documents.

29 8. Within thirty days of the initial pretrial hearing date, a licensee  
30 subject to this article shall report to the commission any criminal  
31 prosecution of the licensee taken in any jurisdiction. The report shall  
32 include a copy of the initial complaint filed, the order resulting from  
33 the hearing and any other relevant legal documents.

34 § 244. Disclosure of compensation. 1. Energy aggregators, energy  
35 brokers, and energy consultants shall be required to disclose their form  
36 and amount of compensation to customers via a conspicuous statement on  
37 any such contract or agreement between the energy agent, energy consult-  
38 ant, energy broker or energy intermediary and its customer.

39 2. Broker compensation shall be added as a provision to the customer  
40 disclosure label and shall reflect the amount and method of broker  
41 compensation.

42 § 245. Rebates prohibited. 1. No energy aggregator, energy broker, or  
43 energy consultant or any other person acting for or on behalf of the  
44 energy aggregator, energy broker or energy consultant shall offer or  
45 make, directly or indirectly, any rebate of any portion of the fee,  
46 premium or charge made, or pay or give to any applicant, or to any  
47 person, firm, or corporation acting as agent, representative, attorney,  
48 or employee of the energy rate payer or any interest therein, either  
49 directly or indirectly, any commission, any part of its fees or charges,  
50 or any other consideration or valuable thing, as an inducement for, or  
51 as compensation for, any energy supply or energy-related business, nor  
52 shall any applicant, or any person, firm, or corporation acting as  
53 agent, representative, attorney, or employee of the energy rate payer or  
54 of the prospective energy rate payer or anyone having any interest in  
55 the real property knowingly receive, directly or indirectly, any such  
56 rebate or other consideration or valuable thing. Any person or entity

1 who violates this section shall be subject to a penalty of five thousand  
2 dollars; or up to ten times the amount of any compensation or rebate  
3 received or paid.

4 2. For the purposes of this section, "an inducement for, or as compen-  
5 sation for, any energy supply business" shall mean a benefit given with  
6 the intention to compensate or offer compensation, directly or indirect-  
7 ly, for any past or present placement for a particular piece of energy  
8 supply or energy-related business to any applicant, or person, firm, or  
9 corporation acting as agent, representative, attorney, or employee of  
10 the energy rate payer, lessee, mortgagee or the prospective energy rate  
11 payer, or any interest therein. Nothing contained in subdivision one of  
12 this section to the contrary shall prohibit any energy supplier corpo-  
13 ration or energy aggregator, energy broker, or energy consultant, or any  
14 other person acting for or on behalf of the energy service company or  
15 energy aggregator, energy broker or energy consultant from undertaking  
16 any usual and customary marketing activity aimed at acquainting present  
17 and prospective customers with the advantages of using a particular  
18 energy supplier or energy aggregator, energy broker, or energy consult-  
19 ant that are not intended for the purpose of a reward for the future  
20 placement of, or the past placement, of a particular piece of energy  
21 supply business.

22 § 2. This act shall take effect on the one hundred eightieth day after  
23 it shall have become a law.