STATE OF NEW YORK

462--C

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the economic development law, in relation to requiring travel consultants and travel promoters located or doing business in this state to be registered with the department of state

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

Section 1. The general business law is amended by adding four new sections 157-b, 157-c, 157-d and 157-e to read as follows:

§ 157-b. Doing business without registration prohibited. 1. No travel consultant or travel promoter shall operate or do business in this state except as authorized by this article and without first being registered by the department of state.

2. The department of state shall provide each registered travel consultant and travel promoter with a unique registration number. Every registered travel consultant and travel promoter shall print his or her registration number on all business cards, and shall provide each customer with a copy of his or her registration number. Every travel consultant and travel promoter shall conspicuously post his or her registration number at his or her place of business at a location regularly open to the public.

§ 157-c. Application for registration. 1. Application for a registration required under this article shall be in writing, under oath, and in

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

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the form prescribed by the secretary of state, and shall contain the following:

a. The exact name and the residence of the applicant;

b. The complete address where the business of the applicant is to be conducted;

c. If the applicant has one or more branches, subsidiaries or affiliates operating in the state, the complete address of each such place of business; and

d. The information, statement, certification and sworn affirmation required by section 3-503 of the general obligations law.

2. Upon original application for a registration to operate as a travel consultant or travel promoter, the applicant shall pay an application fee of one hundred dollars. Upon application for renewal, the registrant shall pay a renewal processing fee of one hundred dollars.

3. Upon filing of an application for a registration, if the secretary of state shall be satisfied of the good character, competency and integrity of the applicant, and of the principals and officers thereof are such as to comply with the provisions of this article, he or she shall thereupon issue a registration to operate as a travel consultant or travel promoter in accordance with the provisions of this article. The secretary of state shall transmit such registration to the registrant and file a copy thereof with the department of state. Such registration shall remain in full force and effect for a period of two years unless it is surrendered by the registrant or revoked or suspended as provided in this article. The secretary of state shall approve or deny every application for registration within one hundred fifty days from the filing thereof. The department of state shall notify the applicant of a denial of registration and the reason for such denial.

§ 157-d. Registration. 1. Each registration issued pursuant to this article shall state the address or addresses at which the business is to be conducted, state fully the name of the registrant, the expiration date of the registration and the unique registration number assigned to the registrant. A copy of such registration shall be prominently posted in each place of business of the registrant. Such registration shall not be transferable or assignable. Every registration and renewal thereof shall expire one year after the date of its issuance.

2. In the event that there shall be any change to the information submitted by the registrant to the department of state, the registrant shall notify the secretary of state in writing within ten business days.

3. A registration granted under the provisions of this article may be renewed by the department of state upon application therefor by the registrant, in such form as the department of state may prescribe, accompanied by the non-refundable renewal processing fee. No registrant shall carry on any business subject to this article during any period which may exist between the date of expiration of a registration and the renewal thereof. Every application for the renewal of a registration shall include the information, statement, certification and sworn affirmation required by section 3-503 of the general obligations law, unless waived by the department of state.

4. The department of state shall post and make available to the public on its internet website a database searchable by each registered travel consultant and travel promoter:

a. first or last name;

b. registration number;

c. name of business; or

d. business location, including municipality, county or zip code.

The department of economic development shall include on its website a conspicuously placed link to the department of state's travel consultant and travel promoter registration database.

§ 157-e. Grounds for denial, suspension or revocation of registration. 1. The secretary of state shall have the power to suspend or revoke a registration or, in lieu thereof, to impose a fine not exceeding one thousand dollars payable to the department of state, or reprimand any registrant or deny an application for a registration or renewal thereof upon proof:

a. that the applicant or registrant has violated any of the provisions of this article or the rules and regulations promulgated pursuant thereto;

b. that the applicant or registrant has knowingly practiced fraud, deceit or misrepresentation; or

c. that the applicant or registrant has knowingly made a material misstatement in the application for or renewal of his or her registration.

2. Every registration issued pursuant to this article shall remain in full force and effect for a period of two years unless the registration shall have been surrendered, revoked or suspended. The secretary of state shall have authority to reinstate a suspended registration or to issue a new registration to a registrant whose registration shall have been revoked if no fact or condition then exists which would have warranted the secretary of state in refusing originally to issue such registration under this article.

3. Whenever the secretary of state shall revoke or suspend a registration issued pursuant to this article, he or she shall immediately execute a written order to that effect. The secretary of state shall file such order in the office of the department of state and shall forthwith serve a copy thereof upon the registrant. Any such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. The use of any registration number of a registration that has been suspended or revoked shall be prohibited after such suspension or revocation.

§ 2. Section 159 of the general business law, as amended by chapter 754 of the laws of 1990, is amended to read as follows:

§ 159. Violations and penalties. 1. Except as otherwise provided by law, any travel consultant [~~who shall violate the terms of section one hundred fifty-eight~~] or travel promoter who knowingly violates the provisions of this article shall be guilty of a misdemeanor, or may be subject to a civil fine imposed by the department of state in an amount not to exceed one thousand dollars.

2. [~~Except as otherwise provided by law, any travel promoter who shall knowingly violate the terms of section one hundred fifty-eight-a of this article shall be guilty of a misdemeanor.~~

~~3.~~] The district attorney of any county may bring an action in the name of the people of the state to restrain or prevent any violation of this article or any continuance of any such violation.

[~~4.~~] 3. Enforcement; penalties. Whenever there shall be a violation of [~~section one hundred fifty-seven-a, one hundred fifty-eight or one hundred fifty-eight-a of~~] this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that

the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

4. Notwithstanding any other provision of law to the contrary, the department of state, shall, before imposing any civil penalty or suspending or revoking a license, notify the registrant in writing that a violation of this article has occurred, and shall afford the registrant an opportunity to be heard in person or by counsel at an administrative hearing. Such notification shall be served personally or by certified mail to the registrant's last known address or in any manner authorized by the civil practice law and rules.

5. Administrative hearings held pursuant to this section shall be conducted by the office of administrative hearings of the department of state pursuant to part four hundred of title nineteen of the New York state codes, rules and regulations and subject to the rules provided therein. Any notice issued pursuant to this section shall be served at least ten days prior to the date set for the administrative hearing.

§ 3. Paragraphs (d) and (e) of subdivision 3 of section 154 of the economic development law, as added by section 1 of part DD of chapter 59 of the laws of 2006, are amended and a new paragraph (f) is added to read as follows:

(d) all reports and data required to be produced and maintained by this section; [~~and~~]

(e) any other data deemed appropriate[~~.~~]**; and**

(f) a listing of all travel consultants and travel promoters registered by the department of state pursuant to article ten-A of the general business law, and their corresponding registration numbers.

§ 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided that, effective immediately, the department of state and the secretary of state are authorized and directed to complete any and all actions necessary to implement the provisions of article 10-A of the general business law, as amended by sections one and two of this act, on the effective date of this act.