

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:

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

3 § 157-b. Doing business without registration prohibited. 1. No travel
4 consultant or travel promoter shall operate or do business in this state
5 except as authorized by this article and without first being registered
6 by the department of state.

7 2. The department of state shall provide each registered travel
8 consultant and travel promoter with a unique registration number. Every
9 registered travel consultant and travel promoter shall print his or her
10 registration number on all business cards, and shall provide each
11 customer with a copy of his or her registration number. Every travel
12 consultant and travel promoter shall conspicuously post his or her
13 registration number at his or her place of business at a location regu-
14 larly open to the public.

15 § 157-c. Application for registration. 1. Application for a registra-
16 tion 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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1 the form prescribed by the secretary of state, and shall contain the
2 following:

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

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

6 c. If the applicant has one or more branches, subsidiaries or affil-
7 iates operating in the state, the complete address of each such place of
8 business; and

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

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

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

29 § 157-d. Registration. 1. Each registration issued pursuant to this
30 article shall state the address or addresses at which the business is to
31 be conducted, state fully the name of the registrant, the expiration
32 date of the registration and the unique registration number assigned to
33 the registrant. A copy of such registration shall be prominently posted
34 in each place of business of the registrant. Such registration shall not
35 be transferable or assignable. Every registration and renewal thereof
36 shall expire one year after the date of its issuance.

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

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

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

53 a. first or last name;

54 b. registration number;

55 c. name of business; or

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

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

4 § 157-e. Grounds for denial, suspension or revocation of registration.
5 1. The secretary of state shall have the power to suspend or revoke a
6 registration or, in lieu thereof, to impose a fine not exceeding one
7 thousand dollars payable to the department of state, or reprimand any
8 registrant or deny an application for a registration or renewal thereof
9 upon proof:

10 a. that the applicant or registrant has violated any of the provisions
11 of this article or the rules and regulations promulgated pursuant there-
12 to;

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

15 c. that the applicant or registrant has knowingly made a material
16 misstatement in the application for or renewal of his or her registra-
17 tion.

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

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

35 § 2. Section 159 of the general business law, as amended by chapter
36 754 of the laws of 1990, is amended to read as follows:

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

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

46 ~~3-]~~ The district attorney of any county may bring an action in the
47 name of the people of the state to restrain or prevent any violation of
48 this article or any continuance of any such violation.

49 [~~4-]~~ 3. Enforcement; penalties. Whenever there shall be a violation of
50 [~~section one hundred fifty-seven-a, one hundred fifty-eight or one~~
51 ~~hundred fifty-eight-a of]~~ this article, an application may be made by
52 the attorney general in the name of the people of the state of New York
53 to a court or justice having jurisdiction by a special proceeding to
54 issue an injunction, and upon notice to the defendant of not less than
55 five days, to enjoin and restrain the continuance of such violations;
56 and if it shall appear to the satisfaction of the court or justice that

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

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

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

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

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

34 (e) any other data deemed appropriate[~~-~~]; and

35 (f) a listing of all travel consultants and travel promoters regis-
36 tered by the department of state pursuant to article ten-A of the gener-
37 al business law, and their corresponding registration numbers.

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