

STATE OF NEW YORK

10804--A

IN ASSEMBLY

May 18, 2018

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to licensing requirements for energy brokers and consultants

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 a new article 42 to read as follows:

ARTICLE 42

ENERGY BROKERS AND CONSULTANTS

Section 1100. Definitions.

1101. Acting without a license.

1102. Energy broker and energy consultant; licensing.

1103. Penalties for violations.

1104. Disclosure of compensation.

1105. Rebates prohibited.

§ 1100. 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 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 public service commission.

3. "Department" means the department of state.

4. "Secretary" means the secretary of state.

5. "Energy broker" means an entity that assumes the contractual and legal responsibility for the sale of electric generation service, transmission or other services to end-use retail customers, but does not take title to any of the power sold, or an entity that assumes the contractu-

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

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1 al and legal obligation to provide natural gas supply service to end-use
2 retail customers, but does not take title to the natural gas.

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

7 7. "Energy service company" or "ESCO" means an entity eligible to sell
8 electricity and/or natural gas to end-use customers using the trans-
9 mission or distribution system of a utility corporation.

10 § 1101. Acting without a license. 1. (a) No person, firm, association
11 or corporation shall act as an energy broker or energy consultant in
12 this state without having authority to do so by virtue of a license
13 issued and in force pursuant to the provisions of this article.

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

19 2. Unless licensed as an energy broker or energy consultant, no
20 person, firm, association or corporation shall in this state identify or
21 hold himself or itself out to be an energy broker or energy consultant.

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

27 4. Every licensee shall notify the department upon changing his, her
28 or its legal name.

29 § 1102. Energy broker and energy consultant; licensing. 1. The secre-
30 tary may issue a license to any person, firm or corporation who or which
31 has complied with the requirements of this article, authorizing such
32 licensee to act as an energy broker or energy consultant provided that
33 such: (i) energy broker demonstrates financial accountability as
34 evidenced by a bond or other method of financial accountability in an
35 amount not less than one hundred thousand dollars; and (ii) energy
36 consultant demonstrates financial accountability as evidenced by a bond
37 or other method of financial accountability in an amount not less than
38 fifty thousand dollars.

39 2. Any such license issued to any person, firm or corporation shall
40 authorize only the officers, directors and employees thereof to act
41 individually as energy brokers and energy consultants, as applicable,
42 thereunder. In addition, a person or entity that is a contractor in an
43 exclusive relationship with a single licensee may also act under that
44 licensee's license. Such licensee shall be held accountable for the
45 actions of the exclusive contractor.

46 3. Before any original energy broker or energy consultant license is
47 issued there shall be on file with the department an application by the
48 prospective licensee in such form or forms and supplements, containing
49 information the secretary prescribes, and meeting eligibility standards
50 the secretary sets forth. Each applicant shall also provide a signa-
51 ture, on a form or forms the public service commission prescribes, that
52 such applicant has read the uniform business practices rules issued
53 pursuant to the rules and regulations of the public service commission.

54 4. The secretary may refuse to issue any applicant license if, in the
55 secretary's judgment, the proposed licensee is not trustworthy and
56 competent to act as such a licensee, or has given cause for the revoca-

tion or suspension of such a license, or has failed to comply with any prerequisite for the issuance of such license.

5. Each license applicant shall annually pay the department a five hundred dollar licensing fee.

§ 1103. Penalties for violations. 1. The secretary may in any one proceeding, by order, require the licensee to pay to the people of this state a penalty in a sum not exceeding one thousand dollars for each offense, and a penalty in a sum not exceeding one million dollars in the aggregate for all offenses.

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

3. The department shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter against any person or entity who is under investigation for or charged with a violation of this chapter, even if the person's or entity's license or registration has been surrendered, or has expired or has lapsed by operation of law.

4. In addition to any penalty ordered pursuant to this section, the secretary may refuse to renew, revoke, or may suspend for a period the secretary determines the license of any energy broker and energy consultant if, after notice and hearing, the secretary determines that the licensee has:

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

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

(c) obtained or attempted to obtain a license through misrepresentation or fraud;

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

(ii) demonstrated incompetence;

(iii) demonstrated untrustworthiness; or

(iv) demonstrated financial irresponsibility in the conduct of business in this state or elsewhere;

(e) improperly withheld, misappropriated or converted any monies or properties received in the course of business in this state or elsewhere;

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

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

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

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

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

5. Before revoking or suspending the license of any energy broker or energy consultant license the secretary shall, except when proceeding pursuant to subdivision six of this section, give prior written notice

1 to the licensee and shall hold, or cause to be held, a hearing not less
2 than ten days after the giving of such notice.

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

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

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

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

30 § 1104. Disclosure of compensation. 1. Energy brokers and energy
31 consultants shall be required to disclose their form and amount of
32 compensation to customers via a conspicuous statement on any such
33 contract or agreement between the energy agent, energy consultant, ener-
34 gy broker or energy intermediary and its customer.

35 2. Broker compensation shall be added as a provision to the customer
36 disclosure label and shall reflect the amount and method of broker
37 compensation.

38 § 1105. Rebates prohibited. 1. No energy broker, energy consultant or
39 any other person acting for or on behalf of the energy broker or energy
40 consultant shall offer or make, directly or indirectly, any rebate of
41 any portion of the fee, premium or charge made, or pay or give to any
42 applicant, or to any person, firm, or corporation acting as agent,
43 representative, attorney, or employee of the energy rate payer or any
44 interest therein, either directly or indirectly, any commission, any
45 part of its fees or charges, or any other consideration or valuable
46 thing, as an inducement for, or as compensation for, any energy supply
47 or energy-related business, nor shall any applicant, or any person,
48 firm, or corporation acting as agent, representative, attorney, or
49 employee of the energy rate payer or of the prospective energy rate
50 payer or anyone having any interest in the real property knowingly
51 receive, directly or indirectly, any such rebate or other consideration
52 or valuable thing. Any person or entity who violates this section shall
53 be subject to a penalty of five thousand dollars; or up to ten times the
54 amount of any compensation or rebate received or paid.

55 2. For the purposes of this section, "an inducement for, or as compen-
56 sation for, any energy supply business" shall mean a benefit given with

the intention to compensate or offer compensation, directly or indirectly, for any past or present placement for a particular piece of energy supply or energy-related business to any applicant, or person, firm, or corporation acting as agent, representative, attorney, or employee of the energy rate payer, lessee, mortgagee or the prospective energy rate payer, or any interest therein. Nothing contained in subdivision one of this section to the contrary shall prohibit any energy supplier corporation, energy broker, or energy consultant, or any other person acting for or on behalf of the energy service company, energy broker or energy consultant from undertaking any usual and customary marketing activity aimed at acquainting present and prospective customers with the advantages of using a particular energy supplier, energy broker, or energy consultant that are not intended for the purpose of a reward for the future placement of, or the past placement, of a particular piece of energy supply business.

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