STATE OF NEW YORK

5998

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. COMRIE -- 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 requiring the registration of energy brokers and energy 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 section 66-p to read as follows:

§ 66-p. Registration of energy brokers and energy consultants. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings unless the context indicates otherwise:

a. "Broker compensation" means any payment made to an energy broker or energy consultant for the purposes of securing or procuring of energy for the end-use customer, or advising on the securing or procuring of energy for the end-use consumer.

b. "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.

c. "Energy broker" means an entity that assumes the contractual and legal responsibility for the sale of electric supply service, transmission or other services to end-use retail customers, but does not take title to any of the electricity sold, or an entity that assumes the contractual and legal obligation to provide for the sale of natural gas supply service, transportation or other services to end-use retail customers, but does not take title to any of the natural gas sold.

d. "Energy consultant" means any person, firm, association or corporation who acts as broker in soliciting, negotiating or advising any electric or natural gas contract, or acts as an agent in accepting any electric or natural gas contract on behalf of an ESCO.

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

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

2. Acting without registering with the commission. a. (i) No person, firm, association or corporation shall act as an energy broker or energy consultant without first registering with the commission.

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

b. No person, firm, association or corporation shall identify or hold himself, herself or itself out to be an energy broker or energy consultant unless registered with the commission.

c. No person shall accept any commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating an energy contract in this state if that person is required to be registered under this section and is not so registered, unless stated otherwise herein.

3. Energy broker and energy consultant registration. a. An energy broker or energy consultant shall register with the commission authorizing such registered energy broker or energy consultant to act as an energy broker or energy consultant in a manner prescribed by the commission; provided that such: (i) energy broker or energy consultant demonstrates financial accountability as evidenced by a bond or other method of financial accountability in an amount not less than one hundred thousand dollars; and (ii) energy consultant demonstrates financial accountability as evidenced by a bond or other method of financial accountability in an amount not less than fifty thousand dollars.

b. The commission may refuse to register or revoke a registration if, in the commission's judgment, the energy broker or energy consultant registering has given cause for the revocation or suspension of operations.

c. Each registered energy broker or energy consultant shall annually pay the commission a five hundred dollar registration fee.

d. Each registered energy broker or energy consultant shall notify the commission upon changing his, her or its legal name.

4. Disclosure of compensation. a. Energy brokers and energy consultants shall be required to disclose their form and amount of compensation to customers via a conspicuous statement on any such contract or agreement between the energy agent, energy consultant, energy broker or energy intermediary and its customer.

b. If an energy service company collects broker compensation on behalf of an energy broker or energy consultant, such broker compensation shall be added as a provision to the customer disclosure label and shall reflect the amount and method of broker compensation.

5. Rebates prohibited. a. No energy broker, energy consultant or any other person acting for or on behalf of the energy broker or energy consultant shall offer or make, directly or indirectly, any rebate of any portion of the fee, premium or charge made, or pay or give to any applicant, or to any person, firm, or corporation acting as agent, representative, attorney, or employee of the energy rate payer or any interest therein, either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement for, or as compensation for, any energy supply or energy-related business, nor shall any applicant, or any person, firm, or corporation acting as agent, representative, attorney, or

employee of the energy rate payer or of the prospective energy rate payer or anyone having any interest in the real property knowingly receive, directly or indirectly, any such rebate or other consideration or valuable thing. Any person or entity who violates this subdivision shall be subject to a penalty equal to the greater of: (i) five thousand dollars; or (ii) up to ten times the amount of any compensation or rebate received or paid.

b. For the purposes of this section, "an inducement for, or as compensation 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 ratepayer, 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.