

5477

2011-2012 Regular Sessions

I N   S E N A T E

May 25, 2011

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Introduced by Sen. ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to increasing disclosures by automobile broker businesses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Paragraph (e) of subdivision 1 of section 738 of the general business law, as added by chapter 616 of the laws of 1988, is amended to read as follows:

2     (e) A description of any other services and an itemization of the charges for each. SUCH DESCRIPTION SHALL INCLUDE DISCLOSURE OF THE AUTOMOBILE DEALER FROM WHICH THE AUTOMOBILE WAS PURCHASED, AS WELL AS ALL FEES, COMMISSIONS OR OTHER VALUABLE CONSIDERATIONS PAID BY AN AUTOMOBILE DEALER TO THE AUTOMOBILE BROKER BUSINESS FOR SELLING, ARRANGING, ASSISTING OR EFFECTING THE SALE OF AN AUTOMOBILE AS AGENT, BROKER, OR INTERMEDIARY BETWEEN THE CONSUMER AND THE AUTOMOBILE DEALER.

3     S 2. The general business law is amended by adding two new sections 740-a and 740-b to read as follows:

4     S 740-A. CONFIDENTIALITY OF SOCIAL SECURITY ACCOUNT NUMBER. AUTOMOBILE BROKER BUSINESSES SHALL COMPLY WITH THE CONFIDENTIALITY PROVISIONS CONTAINED IN SECTION THREE HUNDRED NINETY-NINE-DD OF THIS CHAPTER, AS SUCH SECTION WAS ADDED BY CHAPTER SIX HUNDRED SEVENTY-SIX OF THE LAWS OF TWO THOUSAND SIX.

5     S 740-B. AUTOMOBILE BROKER BUSINESS SURETY BOND. 1. AUTOMOBILE BROKER BUSINESSES SHALL OBTAIN AND CONTINUE IN EFFECT A SURETY BOND IN AN AMOUNT OF TWO HUNDRED FIFTY THOUSAND DOLLARS EXECUTED BY A SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THE STATE BY THE INSURANCE DEPARTMENT OF THE STATE. THE BONDS SHALL BE APPROVED AS TO FORM BY THE SECRETARY OF STATE AND SHALL BE CONDITIONED ON THE AUTOMOBILE BROKER BUSINESS' PAYMENT OF ALL VALID BANK DRAFTS, INCLUDING CHECKS, DRAWN FOR THE PURCHASE OF MOTOR VEHICLES SAFEKEEPING OF ALL CUSTOMER DEPOSITS

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

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1 RELATED TO THE SALE OF A MOTOR VEHICLE BETWEEN THE TIME OF RECEIPT OF  
2 SUCH CUSTOMER DEPOSIT AND THE TRANSFER OF GOOD TITLE TO THE VEHICLE TO  
3 THE CUSTOMER.

4 2. RECOVERY AGAINST A BOND MAY BE MADE BY A PERSON, INCLUDING THE  
5 STATE, WHO OBTAINS A JUDGMENT AGAINST THE AUTOMOBILE BROKER BUSINESS FOR  
6 AN ACT OR OMISSION ON WHICH THE BOND IS CONDITIONED IF THE ACT OR OMIS-  
7 SION OCCURRED DURING THE TERM OF THE BOND. THE TOTAL LIABILITY IMPOSED  
8 ON THE SURETY UNDER THIS SECTION FOR ALL BREACHES OF THE BOND CONDITION  
9 IS LIMITED TO THE FACE AMOUNT OF THE BOND. SUCH LIABILITY MAY INCLUDE,  
10 BUT IS NOT LIMITED TO, THE AMOUNT OF THE VALID BANK DRAFTS, INCLUDING  
11 CHECKS, DRAWN BY THE AUTOMOBILE BROKER BUSINESS FOR THE PURCHASE OF  
12 MOTOR VEHICLES. IN NO EVENT SHALL THE SURETY ON A BOND BE LIABLE FOR  
13 TOTAL CLAIMS IN EXCESS OF THE BOND AMOUNT, REGARDLESS OF THE NUMBER OR  
14 NATURE OF CLAIMS MADE AGAINST THE BOND OR THE NUMBER OF YEARS THE BOND  
15 REMAINED IN FORCE.

16 3. ANY SURETY ISSUING A BOND PURSUANT TO THIS SUBDIVISION SHALL BE  
17 REQUIRED TO PROVIDE SIXTY DAYS' NOTICE TO THE SECRETARY OF STATE PRIOR  
18 TO THE EFFECTIVE DATE OF CANCELLATION OF THE BOND.

19 S 3. The general business law is amended by adding a new section 741-a  
20 to read as follows:

21 S 741-A. ADVERTISING. 1. IN ADDITION TO THE PROVISIONS CONTAINED IN  
22 SECTION SEVEN HUNDRED FORTY-ONE OF THIS ARTICLE, AUTOMOBILE BROKER BUSI-  
23 NESSES SHALL COMPLY WITH THE ADVERTISING PROVISIONS CONTAINED IN SECTION  
24 SIXTY-THREE OF THE EXECUTIVE LAW, AS WELL AS SECTION THREE HUNDRED NINE-  
25 TY-SIX AND ARTICLE TWENTY-TWO-A OF THIS CHAPTER. IT IS HEREBY FURTHER  
26 DECLARED TO BE A DECEPTIVE TRADE PRACTICE AND UNLAWFUL FOR AN AUTOMOBILE  
27 BROKER BUSINESS TO ENGAGE IN THE FOLLOWING:

28 (A) USE OF ONE OR MORE FOOTNOTES OR ASTERISKS WHICH, ALONE OR IN  
29 COMBINATION, CONTRADICT, CONFUSE, MATERIALLY MODIFY OR UNREASONABLY  
30 LIMIT A PRINCIPAL MESSAGE OF THE AD;

31 (B) USE OF ANY PRINT IN A TYPE SIZE LESS THAN TEN-POINT TYPE IN PRINT  
32 ADVERTISING;

33 (C) USE OF COLOR CONTRASTS WHICH RENDER THE TEXT DIFFICULT TO READ;

34 (D) USE OF INACCURATE PHOTOGRAPHS OR ILLUSTRATIONS WHEN DESCRIBING  
35 SPECIFIC AUTOMOBILES; AND

36 (E) USE OF ANY UNEXPLAINED ABBREVIATION OR JARGON WHICH IS CONFUSING,  
37 MISLEADING OR NOT READILY UNDERSTOOD BY THE GENERAL PUBLIC.

38 2. AUTOMOBILE BROKER BUSINESSES SHALL ALSO DISCLOSE THE FOLLOWING IN  
39 ALL ADVERTISEMENTS IN ANY MEDIUM, AND SUCH DISCLOSURES SHALL NOT BE IN  
40 ANY FOOTNOTES OR ASTERISKS AND SHALL BE IN THE TOP HALF OF ANY ADVER-  
41 TISEMENT IN A TYPEFACE NO SMALLER THAN THE LARGEST TYPEFACE OR FONT USED  
42 IN THE AD:

43 (A) THAT THE AUTOMOBILE BROKER BUSINESS IS NOT A LICENSED NEW MOTOR  
44 VEHICLE DEALER AS DEFINED IN SECTION FOUR HUNDRED FIFTEEN OF THE VEHICLE  
45 AND TRAFFIC LAW;

46 (B) WHETHER ANY FEES MAY BE IMPOSED BY THE AUTOMOBILE BROKER BUSINESS  
47 FOR SERVICES RENDERED. DETAILS OF SUCH COMPENSATION SHALL BE PROVIDED BY  
48 THE AUTOMOBILE BROKER BUSINESS UPON REQUEST BY THE CONSUMER; AND

49 (C) THAT NO VEHICLE REPAIR, WARRANTY, OR OTHER SIMILAR SERVICES WILL  
50 BE PROVIDED BY THE AUTOMOBILE BROKER BUSINESS.

51 S 4. This act shall take effect immediately.