

900

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. STAVISKY -- 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 and the personal property law, in relation to requiring certain contracts to be written in the language in which such contracts were negotiated

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

1 Section 1. Section 396-p of the general business law, as added by
2 chapter 736 of the laws of 1978, is amended by adding a new subdivision
3 2-a to read as follows:
4 2-A. ANY RETAIL DEALER WHO NEGOTIATES PRIMARILY IN A LANGUAGE OTHER
5 THAN ENGLISH, ORALLY OR IN WRITING, IN THE COURSE OF ENTERING INTO A
6 CONTRACT PROVIDED FOR IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS
7 SECTION, SHALL DELIVER TO THE CONSUMER WHO IS THE OTHER PARTY TO SUCH
8 CONTRACT AND PRIOR TO THE EXECUTION OF SUCH CONTRACT, AN UNSIGNED TRANS-
9 LATION OF SUCH CONTRACT, IN THE LANGUAGE IN WHICH SUCH CONTRACT WAS
10 NEGOTIATED.
11 (A) IN ADDITION TO THE PENALTIES IMPOSED UNDER SUBDIVISION SIX OF THIS
12 SECTION, FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION SHALL
13 ENTITLE THE AGGRIEVED CONSUMER TO CANCEL SUCH CONTRACT. UPON A FAILURE
14 TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION, THE AGGRIEVED CONSUM-
15 ER MAY CANCEL THE CONTRACT. FOR PURPOSES OF THIS SUBDIVISION, CANCELLA-
16 TION SHALL BE DEEMED TO HAVE OCCURRED WHEN WRITTEN NOTICE OF CANCELLA-
17 TION IS GIVEN TO THE RETAIL DEALER. NOTICE OF CANCELLATION, IF MAILED,
18 SHALL BE DEEMED DELIVERED ON THE DATE OF THE POSTMARK. NOTICE OF CANCEL-
19 LATION SHALL BE SUFFICIENT IF SUCH NOTICE INDICATES THE INTENTION OF THE
20 CONSUMER NOT TO BE BOUND BY SUCH CONTRACT. IF A CONSUMER CANCELS A
21 CONTRACT PURSUANT TO THIS PARAGRAPH, THE RETAIL DEALER SHALL NOT IMPOSE
22 ANY PENALTY OR OBLIGATION UPON SUCH CONSUMER. WHEN A CONTRACT, WHICH HAS
23 BEEN SOLD AND ASSIGNED TO A FINANCIAL INSTITUTION IS CANCELED PURSUANT

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

LBD00046-01-1

1 TO THIS SUBDIVISION, SUCH CONSUMER SHALL MAKE RESTITUTION TO AND HAVE
2 RESTITUTION MADE BY THE RETAIL DEALER WITH WHOM HE OR SHE MADE THE
3 CONTRACT, AND SHALL GIVE NOTICE OF CANCELLATION TO THE ASSIGNEE.
4 NOTWITHSTANDING THAT THE CONTRACT WAS ASSIGNED WITHOUT RECOURSE, THE
5 ASSIGNMENT SHALL BE DEEMED CANCELED AND THE ASSIGNOR SHALL PROMPTLY
6 REPURCHASE THE CONTRACT FROM THE ASSIGNEE.

7 (B) THE TERMS OF THE CONTRACT WHICH IS EXECUTED IN THE ENGLISH
8 LANGUAGE SHALL DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES.
9 HOWEVER, THE TRANSLATION OF THE CONTRACT IN ANY LANGUAGE OTHER THAN
10 ENGLISH IN WHICH THE CONTRACT WAS NEGOTIATED SHALL BE ADMISSIBLE IN
11 EVIDENCE ONLY TO SHOW THAT NO CONTRACT WAS ENTERED INTO BECAUSE OF A
12 SUBSTANTIAL DIFFERENCE IN THE MATERIAL TERMS AND CONDITIONS OF THE
13 CONTRACT AND THE TRANSLATION.

14 (C) THE PROVISIONS OF THIS SUBDIVISION SHALL BE IN ADDITION TO ANY
15 OTHER RIGHTS TO REVOKE AN OFFER.

16 S 2. The general business law is amended by adding a new section 198-d
17 to read as follows:

18 S 198-D. CONTRACTS IN CERTAIN LANGUAGES FOR THE SALE OR LEASE OF USED
19 MOTOR VEHICLES. ANY RETAIL DEALER WHO NEGOTIATES PRIMARILY IN A LANGUAGE
20 OTHER THAN ENGLISH, ORALLY OR IN WRITING, IN THE COURSE OF ENTERING INTO
21 A CONTRACT FOR THE SALE OR LEASE OF A USED MOTOR VEHICLE WITH A CONSUM-
22 ER, SHALL DELIVER TO SUCH CONSUMER WHO IS THE OTHER PARTY TO SUCH
23 CONTRACT AND PRIOR TO THE EXECUTION OF SUCH CONTRACT, AN UNSIGNED TRANS-
24 LATION OF SUCH CONTRACT, IN THE LANGUAGE IN WHICH SUCH CONTRACT WAS
25 NEGOTIATED.

26 A. IN ADDITION TO THE PENALTIES IMPOSED UNDER SUBDIVISION D OF THIS
27 SECTION, FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION SHALL
28 ENTITLE THE AGGRIEVED CONSUMER TO CANCEL SUCH CONTRACT. UPON A FAILURE
29 TO COMPLY WITH THE PROVISIONS OF THIS SECTION, THE AGGRIEVED CONSUMER
30 MAY CANCEL THE CONTRACT. FOR PURPOSES OF THIS SECTION, CANCELLATION
31 SHALL BE DEEMED TO HAVE OCCURRED WHEN WRITTEN NOTICE OF CANCELLATION IS
32 GIVEN TO THE RETAIL DEALER. NOTICE OF CANCELLATION, IF MAILED, SHALL BE
33 DEEMED DELIVERED ON THE DATE OF THE POSTMARK. NOTICE OF CANCELLATION
34 SHALL BE SUFFICIENT IF SUCH NOTICE INDICATES THE INTENTION OF THE
35 CONSUMER NOT TO BE BOUND BY SUCH CONTRACT. IF A CONSUMER CANCELS A
36 CONTRACT PURSUANT TO THIS SUBDIVISION, THE RETAIL DEALER SHALL NOT
37 IMPOSE ANY PENALTY OR OBLIGATION UPON SUCH CONSUMER. WHEN A CONTRACT,
38 WHICH HAS BEEN SOLD AND ASSIGNED TO A FINANCIAL INSTITUTION IS CANCELED
39 PURSUANT TO THIS SUBDIVISION, SUCH CONSUMER SHALL MAKE RESTITUTION TO
40 AND HAVE RESTITUTION MADE BY THE RETAIL DEALER WITH WHOM HE OR SHE MADE
41 THE CONTRACT, AND SHALL GIVE NOTICE OF CANCELLATION TO THE ASSIGNEE.
42 NOTWITHSTANDING THAT THE CONTRACT WAS ASSIGNED WITHOUT RECOURSE, THE
43 ASSIGNMENT SHALL BE DEEMED CANCELED AND THE ASSIGNOR SHALL PROMPTLY
44 REPURCHASE THE CONTRACT FROM THE ASSIGNEE.

45 B. THE TERMS OF THE CONTRACT WHICH IS EXECUTED IN THE ENGLISH LANGUAGE
46 SHALL DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. HOWEVER, THE
47 TRANSLATION OF THE CONTRACT IN ANY LANGUAGE OTHER THAN ENGLISH IN WHICH
48 THE CONTRACT WAS NEGOTIATED SHALL BE ADMISSIBLE IN EVIDENCE ONLY TO SHOW
49 THAT NO CONTRACT WAS ENTERED INTO BECAUSE OF A SUBSTANTIAL DIFFERENCE IN
50 THE MATERIAL TERMS AND CONDITIONS OF THE CONTRACT AND THE TRANSLATION.

51 C. THE PROVISIONS OF THIS SECTION SHALL BE IN ADDITION TO ANY OTHER
52 RIGHTS TO REVOKE AN OFFER.

53 D. ANY RETAIL DEALER OR EMPLOYEE OF A DEALER WHO VIOLATES ANY OF THE
54 PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY NOT TO
55 EXCEED FIFTY DOLLARS FOR THE FIRST OFFENSE AND TWO HUNDRED FIFTY DOLLARS
56 FOR THE SECOND AND EACH SUBSEQUENT OFFENSE.

1 S 3. Section 337 of the personal property law is amended by adding a
2 new subdivision 5-a to read as follows:

3 5-A. ANY RETAIL DEALER WHO NEGOTIATES PRIMARILY IN A LANGUAGE OTHER
4 THAN ENGLISH, ORALLY OR IN WRITING, IN THE COURSE OF ENTERING INTO A
5 RETAIL LEASE AGREEMENT PROVIDED FOR IN THIS SECTION, SHALL DELIVER TO
6 THE CONSUMER WHO IS THE OTHER PARTY TO SUCH AGREEMENT AND PRIOR TO THE
7 EXECUTION OF SUCH AGREEMENT, AN UNSIGNED TRANSLATION OF SUCH AGREEMENT,
8 IN THE LANGUAGE IN WHICH SUCH AGREEMENT WAS NEGOTIATED.

9 (A) IN ADDITION TO THE PENALTIES IMPOSED UNDER SECTION THREE HUNDRED
10 FORTY-SIX OF THIS ARTICLE, FAILURE TO COMPLY WITH THE PROVISIONS OF THIS
11 SUBDIVISION SHALL ENTITLE THE AGGRIEVED CONSUMER TO CANCEL SUCH AGREE-
12 MENT. UPON A FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION,
13 THE AGGRIEVED CONSUMER MAY CANCEL THE AGREEMENT. FOR PURPOSES OF THIS
14 SUBDIVISION, CANCELLATION SHALL BE DEEMED TO HAVE OCCURRED WHEN WRITTEN
15 NOTICE OF CANCELLATION IS GIVEN TO THE RETAIL DEALER. NOTICE OF CANCEL-
16 LATION, IF MAILED, SHALL BE DEEMED DELIVERED ON THE DATE OF THE POST-
17 MARK. NOTICE OF CANCELLATION SHALL BE SUFFICIENT IF SUCH NOTICE INDI-
18 CATES THE INTENTION OF THE CONSUMER NOT TO BE BOUND BY SUCH AGREEMENT.
19 IF A CONSUMER CANCELS AN AGREEMENT PURSUANT TO THIS PARAGRAPH, THE
20 RETAIL DEALER SHALL NOT IMPOSE ANY PENALTY OR OBLIGATION UPON SUCH
21 CONSUMER. WHEN AN AGREEMENT, WHICH HAS BEEN SOLD AND ASSIGNED TO A
22 FINANCIAL INSTITUTION IS CANCELED PURSUANT TO THIS SUBDIVISION, SUCH
23 CONSUMER SHALL MAKE RESTITUTION TO AND HAVE RESTITUTION MADE BY THE
24 RETAIL DEALER WITH WHOM HE OR SHE MADE THE AGREEMENT, AND SHALL GIVE
25 NOTICE OF CANCELLATION TO THE ASSIGNEE. NOTWITHSTANDING THAT THE AGREE-
26 MENT WAS ASSIGNED WITHOUT RECOURSE, THE ASSIGNMENT SHALL BE DEEMED
27 CANCELED AND THE ASSIGNOR SHALL PROMPTLY REPURCHASE THE AGREEMENT FROM
28 THE ASSIGNEE.

29 (B) THE TERMS OF THE AGREEMENT WHICH IS EXECUTED IN THE ENGLISH
30 LANGUAGE SHALL DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES.
31 HOWEVER, THE TRANSLATION OF THE AGREEMENT IN ANY LANGUAGE OTHER THAN
32 ENGLISH IN WHICH THE AGREEMENT WAS NEGOTIATED SHALL BE ADMISSIBLE IN
33 EVIDENCE ONLY TO SHOW THAT NO CONTRACT WAS ENTERED INTO BECAUSE OF A
34 SUBSTANTIAL DIFFERENCE IN THE MATERIAL TERMS AND CONDITIONS OF THE
35 AGREEMENT AND THE TRANSLATION.

36 (C) THE PROVISIONS OF THIS SUBDIVISION SHALL BE IN ADDITION TO ANY
37 OTHER RIGHTS TO REVOKE AN OFFER.

38 S 4. This act shall take effect on the one hundred twentieth day after
39 it shall have become a law and shall apply to contracts entered into on
40 or after such effective date.