

6704

I N S E N A T E

February 8, 2016

Introduced by Sen. GOLDEN -- 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 requiring automobile brokers to be licensed

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

1 Section 1. Section 736 of the general business law is amended by
2 adding two new subdivisions 4 and 5 to read as follows:
3 4. "SECRETARY" MEANS THE SECRETARY OF STATE.
4 5. "DIVISION" MEANS THE DIVISION OF CRIMINAL JUSTICE SERVICES.
5 S 2. The general business law is amended by adding four new sections
6 736-a, 736-b, 736-c and 736-d to read as follows:
7 S 736-A. LICENSE AND SURETY BOND REQUIRED. 1. NO PERSON, CORPORATION,
8 PARTNERSHIP OR FIRM SHALL HEREAFTER CARRY ON THE BUSINESS OF AN AUTOMO-
9 BILE BROKER, AS DEFINED IN SECTION SEVEN HUNDRED THIRTY-SIX OF THIS
10 ARTICLE, WITHOUT FIRST HAVING (A) RECEIVED A LICENSE TO ENGAGE IN SUCH
11 PRACTICE IN THE MANNER PRESCRIBED IN THIS ARTICLE, AND (B) OBTAINED A
12 SURETY BOND PRESCRIBED IN SECTION SEVEN HUNDRED FORTY-A OF THIS ARTICLE.
13 2. NO PERSON SHALL OWN, CONTROL OR OPERATE, WHETHER AS A SOLE PROPRIE-
14 TOR, PARTNER, SHAREHOLDER, OFFICER, INDEPENDENT CONTRACTOR OR OTHER
15 PERSON, AN AUTOMOBILE BROKER BUSINESS, AS DEFINED IN SECTION SEVEN
16 HUNDRED THIRTY-SIX OF THIS ARTICLE, WITHOUT FIRST HAVING (A) RECEIVED A
17 LICENSE TO ENGAGE IN SUCH PRACTICE IN THE MANNER PRESCRIBED IN THIS
18 ARTICLE, AND (B) OBTAINED A SURETY BOND PRESCRIBED IN SECTION SEVEN
19 HUNDRED FORTY-A OF THIS ARTICLE.
20 S 736-B. APPLICATION FOR LICENSES. 1. APPLICATION FOR A LICENSE
21 REQUIRED UNDER THIS ARTICLE SHALL BE IN WRITING, UNDER OATH, AND IN THE
22 FORM PRESCRIBED BY THE SECRETARY, AND SHALL CONTAIN THE FOLLOWING:
23 A. THE EXACT NAME AND THE ADDRESS OF THE APPLICANT AND ITS DATE OF
24 INCORPORATION;
25 B. THE NAME AND THE BUSINESS AND RESIDENTIAL ADDRESS OF EACH PRINCIPAL
26 AND OFFICER OF THE APPLICANT;
27 C. THE COMPLETE ADDRESS WHERE THE BUSINESS OF THE APPLICANT IS TO BE
28 CONDUCTED, SHOWING THE STREET AND NUMBER, IF ANY, POST OFFICE AND BUILD-

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

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1 ING AND ROOM NUMBER, IF ANY, THE OFFICE BUILDING AND ROOM NUMBER, IF
2 ANY, AND THE MUNICIPALITY AND COUNTY;

3 D. IF THE APPLICANT HAS ONE OR MORE BRANCHES, SUBSIDIARIES OR AFFIL-
4 IATES OPERATING IN THE STATE, THE COMPLETE ADDRESS OF EACH SUCH PLACE OF
5 BUSINESS; AND

6 E. A COMPLETE SET OF TWO FINGERPRINT CARDS FOR EACH PRINCIPAL AND
7 OFFICER OF THE APPLICANT ON A STANDARD FINGERPRINT CARD APPROVED BY THE
8 DIVISION AND A FEE PURSUANT TO SUBDIVISION EIGHT-A OF SECTION EIGHT
9 HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW, AND AMENDMENTS THERETO, FOR
10 THE COST OF THE DIVISION'S FULL SEARCH AND RETAIN PROCEDURES, WHICH FEE
11 SHALL BE REMITTED BY THE DEPARTMENT TO THE DIVISION FOR DEPOSIT BY THE
12 COMPTROLLER INTO THE GENERAL FUND. BEFORE APPROVING SUCH APPLICATION THE
13 SECRETARY, OR HIS OR HER DESIGNEE, SHALL FORWARD ONE COPY OF SUCH FING-
14 ERPRINT CARD AND THE PROCESSING FEE TO THE DIVISION UPON RECEIPT OF SUCH
15 FINGERPRINTS. THE DIVISION SHALL FORWARD TO THE SECRETARY A REPORT WITH
16 RESPECT TO THE APPLICANT'S PREVIOUS CRIMINAL HISTORY, IF ANY, OR A
17 STATEMENT THAT THE APPLICANT HAS NO PREVIOUS CRIMINAL HISTORY ACCORDING
18 TO ITS FILES. IF ADDITIONAL COPIES OF FINGERPRINTS ARE REQUIRED, THE
19 APPLICANT SHALL FURNISH THEM UPON REQUEST.

20 2. UPON ORIGINAL APPLICATION FOR A LICENSE TO OPERATE AN AUTOMOBILE
21 BROKER BUSINESS, THE APPLICANT SHALL PAY AN APPLICATION FEE, IN SUCH
22 AMOUNT AS MAY BE DETERMINED BY THE SECRETARY, NOT TO EXCEED THREE
23 HUNDRED DOLLARS. UPON APPLICATION FOR A LICENSE RENEWAL, THE LICENSEE
24 SHALL PAY A RENEWAL PROCESSING FEE IN SUCH AMOUNT AS SHALL BE DETERMINED
25 BY THE SECRETARY, NOT TO EXCEED THREE HUNDRED DOLLARS.

26 S 736-C. CONDITIONS PRECEDENT TO LICENSING. UPON FILING OF AN APPLICA-
27 TION FOR A LICENSE, IF THE SECRETARY SHALL BE SATISFIED OF THE GOOD
28 CHARACTER, COMPETENCY AND INTEGRITY OF THE APPLICANT, AND OF THE PRINCI-
29 PALS AND OFFICERS THEREOF ARE SUCH AS TO COMPLY WITH THE PROVISIONS OF
30 THIS ARTICLE, HE OR SHE SHALL THEREUPON ISSUE A LICENSE IN DUPLICATE TO
31 OPERATE AN AUTOMOBILE BROKER BUSINESS IN ACCORDANCE WITH THE PROVISIONS
32 OF THIS ARTICLE. THE SECRETARY SHALL TRANSMIT ONE COPY OF SUCH LICENSE
33 TO THE LICENSEE AND FILE ANOTHER IN THE OFFICE OF THE DEPARTMENT. SUCH
34 LICENSE SHALL REMAIN IN FULL FORCE AND EFFECT FOR A PERIOD OF TWO YEARS
35 UNLESS IT IS SURRENDERED BY THE LICENSEE OR REVOKED OR SUSPENDED AS
36 HEREINAFTER PROVIDED; IF THE SECRETARY SHALL NOT SO FIND, THE SECRETARY
37 SHALL NOT ISSUE SUCH LICENSE AND THE SECRETARY SHALL NOTIFY THE APPLI-
38 CANT OF THE DENIAL IN WRITING. THE SECRETARY SHALL APPROVE OR DENY EVERY
39 APPLICATION FOR LICENSE HEREUNDER WITHIN NINETY DAYS FROM THE FILING
40 THEREOF.

41 S 736-D. LICENSING. 1. EACH LICENSE ISSUED UNDER THIS ARTICLE SHALL
42 STATE THE ADDRESS OR ADDRESSES AT WHICH THE BUSINESS IS TO BE CONDUCTED
43 AND SHALL STATE FULLY THE NAME OF THE LICENSEE, AND THE DATE AND PLACE
44 OF ITS INCORPORATION AND THE EXPIRATION DATE OF THE LICENSE. A COPY OF
45 SUCH LICENSE SHALL BE PROMINENTLY POSTED IN EACH PLACE OF BUSINESS OF
46 THE LICENSEE. SUCH LICENSE SHALL NOT BE TRANSFERABLE OR ASSIGNABLE.

47 2. IN THE EVENT THE LOCATION AT WHICH THE BUSINESS IS TO BE CONDUCTED
48 SHALL BE CHANGED, THE LICENSEE SHALL FORTHWITH NOTIFY THE SECRETARY IN
49 WRITING, WHO SHALL THEREUPON WITHOUT CHARGE ATTACH TO THE LICENSE A
50 RIDER SETTING FORTH SUCH CHANGED LOCATION.

51 3. IN THE EVENT THAT THERE SHALL BE ANY CHANGE AMONG THE PRINCIPALS OR
52 OFFICERS OF ANY LICENSEE, THE LICENSEE SHALL FORTHWITH NOTIFY THE SECRE-
53 TARY IN WRITING, OF THE NAME AND ADDRESS OF EACH NEW PRINCIPAL OR OFFI-
54 CER, AND SHALL SUBMIT A COMPLETE SET OF TWO FINGERPRINT CARDS FOR EACH
55 SUCH PRINCIPAL OR OFFICER IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH

1 E OF SUBDIVISION ONE OF SECTION SEVEN HUNDRED THIRTY-SIX-B OF THIS ARTI-
2 CLE.

3 4. PRIOR TO OR UPON THE SALE OR TRANSFER OF ALL OR THE MAJORITY OF THE
4 STOCK OR ASSETS OF ANY AUTOMOBILE BROKER BUSINESS, THE NEW PRINCIPALS OR
5 OFFICERS SHALL APPLY FOR A NEW LICENSE WITH THE DEPARTMENT IN ACCORDANCE
6 WITH THE PROVISIONS OF SECTION SEVEN HUNDRED THIRTY-SIX-B AND SECTION
7 SEVEN HUNDRED THIRTY-SIX-C OF THIS ARTICLE. SUCH APPLICATION SHALL BE
8 MADE WITHIN SIXTY DAYS OF SUCH SALE OR TRANSFER.

9 5. A LICENSE GRANTED UNDER THE PROVISIONS OF THIS ARTICLE MAY BE
10 RENEWED BY THE SECRETARY UPON APPLICATION THEREFOR BY THE LICENSEE, IN
11 SUCH FORM AS THE SECRETARY MAY PRESCRIBE, ACCOMPANIED BY THE NON-REFUND-
12 ABLE RENEWAL PROCESSING FEE PURSUANT TO SUBDIVISION TWO OF SECTION SEVEN
13 HUNDRED THIRTY-SIX-B OF THIS ARTICLE. IN NO EVENT WILL RENEWAL BE GRANTED
14 MORE THAN SIX MONTHS AFTER THE DATE OF EXPIRATION OF A LICENSE. NO
15 PERSON, FIRM, COMPANY, PARTNERSHIP OR CORPORATION SHALL CARRY ON ANY
16 BUSINESS SUBJECT TO THIS ARTICLE DURING ANY PERIOD WHICH MAY EXIST
17 BETWEEN THE DATE OF EXPIRATION OF A LICENSE AND THE RENEWAL THEREOF.

18 S 3. Section 743 of the general business law, as added by chapter 616
19 of the laws of 1988, is amended to read as follows:

20 S 743. Enforcement by attorney general. In addition to the other reme-
21 dies provided, whenever there shall be a violation of this article,
22 application may be made by the attorney general in the name of the
23 people of the state of New York to a court or justice having jurisdic-
24 tion by a special proceeding to issue an injunction, and upon notice to
25 the defendant of not less than five days, to enjoin and restrain the
26 continuance of such violations; and if it shall appear to the satisfac-
27 tion of the court or justice that the defendant has, in fact, violated
28 this article, an injunction may be issued by such court or justice,
29 enjoining and restraining any further violation, without requiring proof
30 that any person has, in fact, been injured or damaged thereby. In any
31 such proceeding, the court may make allowances to the attorney general
32 as provided in paragraph six of subdivision (a) of section eighty-three
33 hundred three of the civil practice law and rules, and direct restitu-
34 tion. Whenever the court shall determine that a violation of this arti-
35 cle has occurred, the court [may] SHALL impose a civil penalty of not
36 [more] LESS than one thousand dollars AND NOT MORE THAN THREE THOUSAND
37 DOLLARS for each violation. In connection with any such proposed appli-
38 cation, the attorney general is authorized to take proof and make a
39 determination of the relevant facts and to issue subpoenas in accordance
40 with the civil practice law and rules.

41 S 4. This act shall take effect on the ninetieth day after it shall
42 have become a law; provided, however, that the secretary of state shall
43 take actions necessary to provide for the issuance of licenses pursuant
44 to section 736-d of the general business law, as added by section two of
45 this act, prior to such date.