

STATE OF NEW YORK

6655--A

2019-2020 Regular Sessions

IN ASSEMBLY

March 14, 2019

Introduced by M. of A. CARROLL, ABBATE, STIRPE, REYES, DenDEKKER, TAYLOR, CYMBROWITZ, DICKENS, M. G. MILLER, D'URSO, ENGLEBRIGHT, D. ROSENTHAL, GALEF, GOTTFRIED, RAMOS, DeSTEFANO, MIKULIN, SMITH, SAYEGH, WILLIAMS, COOK, ABINANTI, McDONOUGH, QUART, SEAWRIGHT, LIPE-TRI, REILLY, B. MILLER, ROZIC, PALUMBO, EPSTEIN, FERNANDEZ, RYAN, STECK, CRUZ, PHEFFER AMATO, PICHARDO, RAIA, RA, BENEDETTO, BYRNE, JACOBSON, BUCHWALD, HYNDMAN -- Multi-Sponsored by -- M. of A. DE LA ROSA, LAWRENCE, SIMON -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law and the general business law, in relation to designating new automotive broker businesses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 415 of the vehicle and traffic law
2 is amended by adding a new paragraph n to read as follows:

3 n. "New automobile broker business" shall have the same meaning as set
4 forth in subdivision four of section seven hundred thirty-six of the
5 general business law.

6 § 2. Section 736 of the general business law is amended by adding a
7 new subdivision 4 to read as follows:

8 4. "New automobile broker business" means any person who, for a fee,
9 commission or other valuable consideration, regardless of whether such
10 fee, commission or consideration is paid directly by a consumer, offers
11 to provide, provides or represents that he or she will provide a service
12 of purchasing, arranging, assisting, facilitating or effecting the
13 purchase or lease of a previously unregistered automobile; through a new
14 motor vehicle dealer, as agent, broker, or intermediary for a consumer.
15 "New automobile broker business" does not include any person registered
16 as a new vehicle dealer for the new automobile brand or brands for which

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

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1 such services are provided, pursuant to article sixteen of the vehicle
2 and traffic law nor any bona fide employee of such a registered dealer
3 while acting for such dealer.

4 § 3. Subdivision 3-a and paragraph b-3 of subdivision 5 of section 415
5 of the vehicle and traffic law, as added by chapter 477 of the laws of
6 2017, are amended to read as follows:

7 3-a. Automobile broker business ~~[registration]~~ or new automobile
8 broker business. No person shall engage in the automobile broker busi-
9 ness, the new automobile broker business or represent or advertise that
10 he or she is engaged or intends to engage in the automobile broker busi-
11 ness or new automobile broker business in this state, unless there shall
12 have been issued to him or her a certificate of registration as an auto-
13 mobile broker business or new automobile broker business, as the case
14 may be, by the commissioner under this section pursuant to an applica-
15 tion for registration submitted pursuant to subdivision five of this
16 section. The commissioner shall not issue any certificate of registra-
17 tion authorized by this section to any franchisor, manufacturer,
18 distributor, distributor branch or factory branch, as such terms are
19 defined in section four hundred sixty-two of this title, or to any
20 subsidiary, affiliate or controlled entity thereof.

21 b-3. In the case of an application for registration as an automobile
22 broker business or new automobile broker business, the name and address
23 of the surety company which will issue the bond required by subdivision
24 one of section seven hundred forty-a of the general business law and a
25 statement indicating any interest in the applicant's business entity by
26 a person or entity described in paragraph f of subdivision seven of this
27 section. If the bond is to be issued by an authorized agent of the sure-
28 ty company licensed by the state, then the name and address of that
29 agent may be provided in lieu of the information concerning the surety
30 company.

31 § 4. Subdivision 5 of section 415 of the vehicle and traffic law is
32 amended by adding a new paragraph e to read as follows:

33 e. Before application for a new automobile broker business is
34 approved, the applicant must have submitted along with the application,
35 written confirmation from the new motor vehicle manufacturer and/or
36 distributor permitting the applicant to serve as an approved registered
37 broker for the sale or lease, through a new motor vehicle dealer, of a
38 new motor vehicle of the line makes which the applicant proposes to
39 broker from the geographic location described in the application. The
40 geographic location included in the application shall be subject to the
41 provisions of article seventeen-A of this title regarding franchised
42 automobile dealers.

43 § 5. Subdivision 1 of section 736-a of the general business law, as
44 added by chapter 477 of the laws of 2017, is amended and a new subdivi-
45 sion 3 is added to read as follows:

46 1. (a) No person shall engage in business as an automobile broker
47 business or as a new automobile broker business, as such terms are
48 defined in section seven hundred thirty-six of this article, without
49 first having been issued a certificate of registration for an automobile
50 broker business or new automobile broker business pursuant to paragraph
51 c of subdivision seven of section four hundred fifteen of the vehicle
52 and traffic law. A certificate of registration for a new automobile
53 broker business is valid for a period of two years.

54 (b) No new automobile broker business shall represent or accept
55 payment from, either directly or indirectly, a franchisor, manufacturer

1 and/or distributor, as such terms are defined in sections four hundred
2 fifteen and four hundred sixty-two of the vehicle and traffic law.

3 3. The commissioner of motor vehicles shall make necessary rules and
4 regulations as may be appropriate for the proper enforcement of the
5 provisions of this section.

6 § 6. The general business law is amended by adding a new section 741-c
7 to read as follows:

8 § 741-c. Prohibitions related to private information. No person regis-
9 tered under this article shall request, handle, store or transmit the
10 private information, as such term is defined in paragraph (b) of subdi-
11 vision one of section eight hundred ninety-nine-aa of this chapter, of
12 any consumer.

13 § 7. Section 737 of the general business law, as added by chapter 616
14 of the laws of 1988, is amended to read as follows:

15 § 737. Advance fees prohibited. No automobile broker business or new
16 automobile broker business shall solicit, receive or collect from a
17 consumer any fee, or commission, in advance of the performance of those
18 services specified in the contract as required by section seven hundred
19 thirty-eight of this article.

20 § 8. The opening paragraph of subdivision 1 of section 738 of the
21 general business law, as amended by chapter 28 of the laws of 2018, is
22 amended to read as follows:

23 Every contract between a consumer and an automobile broker business,
24 which for the purposes of this section shall include new automobile
25 broker businesses, for the purchase of an automobile shall be in writ-
26 ing, shall be dated, shall contain the street address of the automobile
27 broker business and the consumer and shall be signed by the consumer and
28 by the automobile broker business. Every contract shall comply with the
29 requirements set forth in this section and contain the following:

30 § 9. Section 740 of the general business law, as added by chapter 616
31 of the laws of 1988, is amended to read as follows:

32 § 740. Escrow required for advance payments. All monies paid by a
33 consumer to an automobile broker business or a new automobile broker
34 business in connection with a transaction covered by this article shall
35 be trust funds in the possession of such automobile broker business or
36 new automobile broker business and shall be deposited by it within five
37 days after receipt thereof, in an account in a banking organization
38 within the state. The automobile broker business or new automobile
39 broker business shall thereupon notify in writing the consumer, giving
40 the name and address of the banking organization and the amount deposit-
41 ed. The monies shall be held on deposit until fully applied to the
42 contract price at the time the automobile is delivered to the consumer,
43 unless sooner repaid in accordance with the provisions of this article.

44 § 10. Section 740-a of the general business law, as added by chapter
45 579 of the laws of 2011 and subdivision 1 as amended by chapter 477 of
46 the laws of 2017, is amended to read as follows:

47 § 740-a. Automobile broker business and new automobile broker business
48 surety bond. 1. Automobile broker businesses and new automobile broker
49 businesses shall obtain and continue in effect a surety bond in an
50 amount of one hundred thousand dollars executed by a surety company
51 authorized to transact business in the state by the department of finan-
52 cial services of the state or its successor. The bonds shall be approved
53 as to form by the secretary of state and shall be conditioned on the
54 automobile broker business' or new automobile broker business' payment
55 of all valid bank drafts, including checks, drawn for the purchase of
56 motor vehicles and safekeeping of all customer deposits related to the

1 sale of a motor vehicle between the time of receipt of such customer
2 deposit and the transfer of good title to the vehicle to the customer.

3 2. Recovery against a bond may be made by a person, including the
4 state, who obtains a judgment against the automobile broker business or
5 new automobile broker business for an act or omission on which the bond
6 is conditioned if the act or omission occurred during the term of the
7 bond. The total liability imposed on the surety under this section for
8 all breaches of the bond condition is limited to the face amount of the
9 bond. Such liability may include, but is not limited to, the amount of
10 the valid bank drafts, including checks, drawn by the automobile broker
11 business or new automobile broker business for the purchase of motor
12 vehicles. In no event shall the surety on a bond be liable for total
13 claims in excess of the bond amount, regardless of the number or nature
14 of claims made against the bond or the number of years the bond remained
15 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 § 11. Section 741 of the general business law, as added by chapter 616
20 of the laws of 1988, is amended to read as follows:

21 § 741. Deceptive acts prohibited. It is hereby declared to be a decep-
22 tive trade practice and unlawful for an automobile broker business or
23 new automobile broker business to misrepresent directly or indirectly in
24 its advertising, promotional materials, sales presentation, or in any
25 manner:

26 1. The nature of the services to be performed and in the case of a new
27 automobile broker that a third party will be paying for any such
28 services;

29 2. The time within which the services will be performed;

30 3. The cost of the services to be performed; ~~and~~

31 4. The ability of the automobile broker business or new automobile
32 broker business to perform the services; and

33 5. That the automobile broker business or new automobile broker busi-
34 ness is affiliated with any automobile manufacturer and/or distributor,
35 provided, however, that a new automobile broker business may state the
36 line makes for which it holds permission pursuant to section four
37 hundred fifteen of the vehicle and traffic law.

38 § 12. Section 741-a of the general business law, as amended by chapter
39 477 of the laws of 2017, is amended to read as follows:

40 § 741-a. Advertising. Automobile broker businesses and new automobile
41 broker businesses shall clearly and conspicuously disclose the following
42 in all advertisements in any medium, and in any print advertisement such
43 disclosures shall not appear in any footnotes and shall be situated in
44 the top half of any such advertisement in an easily readable typeface:

45 (a) That the automobile broker business or new automobile broker busi-
46 ness is not a registered new motor vehicle dealer but is a registered
47 automobile broker business or new automobile broker business as defined
48 in section four hundred fifteen of the vehicle and traffic law;

49 (b) The registration number issued to the automobile broker business
50 or new automobile broker business pursuant to section four hundred
51 fifteen of the vehicle and traffic law;

52 (c) Whether any fees may be imposed by the automobile broker business
53 or new automobile broker business for services rendered. Details of such
54 compensation shall be provided by the automobile broker business or new
55 automobile broker business upon request by the consumer; and

(d) That no warranty repair services will be provided by the automobile broker business or new automobile broker business.

§ 13. Section 415 of the vehicle and traffic law is amended by adding a new subdivision 21 to read as follows:

21. Penalties and rights of action for failure to obtain a certificate of registration as a new automobile broker pursuant to subdivision three-a and paragraph b-3 of subdivision five of this section. a. The commissioner, or any person designated by him or her, may proceed against a party who has operated as a new automobile broker without certificate of registration in accordance with the provisions of this article, in any one or more proceedings and by order require the offending party to pay the people of this state a penalty in a sum not to exceed two thousand dollars for each violation found to have been committed. Civil penalties assessed under this subdivision shall be paid to the commissioner for deposit into the state treasury, and unpaid civil penalties may be recovered by the commissioner in a civil action in the name of the commissioner. For the purposes of this subdivision, a "violation" shall mean each vehicle sold or leased to a consumer for which the party that failed to obtain certification as a new automobile broker has served as a new automobile broker.

b. In addition to any civil action brought by the commissioner or any person appointed by him, any persons injured by any violation of subdivision three-a and paragraph b-3 of subdivision five of this section, shall be entitled to sue for and have injunctive relief and damages against, any party in violation of subdivision three-a and paragraph b-3 of subdivision five of this section in any court of the state having jurisdiction over the parties. In the case of a new motor vehicle dealer, injury shall include the sale or lease of a new motor vehicle to a person residing within the relevant market area of such dealer. The term "relevant market area" shall have the same meaning as in subdivision fifteen of section four hundred sixty-two of this title. In any such judicial action or proceeding, the court may award reasonable attorney's fees and costs.

§ 14. Subdivision 2 of section 463 of the vehicle and traffic law is amended by adding three new paragraphs (ll), (mm) and (nn) to read as follows:

(ll) To issue written confirmation to a new automobile broker business permitting such business to serve as an approved registered broker for the sale or lease, through a new motor vehicle dealer, of such manufacturer's new motor vehicles, unless the manufacturer provides notice pursuant to the terms of this paragraph. All dealers that have a relevant market area that encompasses the proposed site shall be entitled to written notice, via certified mail return receipt requested, informing them of the proposed approval of a new automobile broker business. Any new motor vehicle dealer may institute an adjudicatory proceeding or action as provided in section four hundred sixty-nine of this article to protest the issuance of such written confirmation to a new automobile broker business permitting such business to serve as an approved registered broker following receipt of such notice, or following the end of any appeal procedure provided by the manufacturer. In any adjudicatory proceeding or action brought by the dealer, the manufacturer shall have the burden of proving that there exists good cause to permit such new automobile broker business to serve as an approved registered broker and that such permission will not harm the dealer within the relevant market area. Institution of an action pursuant to this paragraph shall serve to stay, without bond, the effectiveness of the written confirmation of

1 such manufacturer until a final judgment has been rendered in a proceed-
2 ing or action as provided in section four hundred sixty-nine of this
3 article. A manufacturer shall not issue written confirmation permitting
4 a new automobile broker business to serve as an approved registered
5 broker to any person or entity which has been cited for any violation of
6 article thirty-five-B of the general business law, or which has a busi-
7 ness relationship with any new franchised motor vehicle dealer not
8 licensed to operate as a new motor vehicle dealer within the state, or
9 does not have a relevant market area that includes any portion of the
10 state. For the purposes of this paragraph "business relationship" shall
11 mean activity that includes paying a new automobile broker business by a
12 new motor vehicle dealer not licensed to operate as a new motor vehicle
13 dealer within the state, or does not have a relevant market area that
14 includes any portion of the state in connection with the sale or leader
15 of a new motor vehicle.

16 (mm) To issue written confirmation to a new automobile broker business
17 that permits such business to serve as an approved registered broker for
18 a period exceeding two years.

19 (nn) For incentive payments, bonuses, holdbacks or similar payments
20 related to the sale or lease of a new motor vehicle that has been
21 arranged, assisted, facilitated or effected in a particular relevant
22 market area, to deny a franchised motor vehicle dealer located in such
23 relevant market area a payment of equal value as has been awarded to
24 another franchised motor vehicle dealer. Nothing in this paragraph shall
25 be construed to authorize any incentive payment, bonus, holdback or
26 similar payment to any automobile broker business or new automobile
27 broker business, as such terms are defined in section seven hundred
28 thirty-six of the general business law.

29 § 15. Section 465 of the vehicle and traffic law is amended by adding
30 a new subdivision 8 to read as follows:

31 8. A new vehicle manufacturer shall require its franchisees to main-
32 tain a record of all sales or leases arranged, assisted, facilitated or
33 effected by each new automobile broker business to which it has provided
34 written confirmation permitting it to serve as a new automobile broker
35 business, as such term is defined in section seven hundred thirty-six of
36 the general business law. New vehicle manufacturers shall further main-
37 tain a record of all incentives paid to any franchisee attributable to
38 any sale or lease that has been arranged, assisted, facilitated or
39 effected by a new automobile broker business. For sales or leases
40 arranged, assisted, facilitated or effected by any new automobile broker
41 business operating or based in a particular relevant market area, a new
42 vehicle manufacturer shall furnish a record of incentives paid to any
43 franchisee attributable to any such sales or leases to the franchisee
44 operating or based within any such relevant market area.

45 § 16. This act shall take effect immediately; provided that all auto-
46 mobile brokers registered on the effective date of this act shall have
47 ninety days to come into compliance with the provisions of this act.