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IN ASSEMBLY

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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, PERRY, THIELE, SOLAGES, LAVINE, STERN, GARBARINO, GRIFFIN -- Multi-Sponsored by -- M. of A. DE LA ROSA, FITZPATRICK, HEVESI, 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 -- again reported from said committee with amendments, 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. Paragraph a of subdivision 1 of section 415 of the vehicle
2 and traffic law, as amended by chapter 554 of the laws of 2015, is
3 amended and a new paragraph n is added to read as follows:
4 a. "Dealer" means a person engaged in the business of buying, selling
5 or dealing in motor vehicles, motorcycles or trailers, other than mobile
6 homes or manufactured homes, at retail or wholesale; except, however,
7 trailers with an unladen weight of less than one thousand pounds. For
8 the purposes of this section, a "mobile home" or "manufactured home"
9 means a mobile home or manufactured home as defined in section one
10 hundred twenty-two-c of this chapter. Any person who sells, or offers
11 for sale or lease more than five motor vehicles, motorcycles or trailers
12 in any calendar year or who displays or permits the display of three or
13 more motor vehicles, motorcycles or trailers for sale at any one time or
14 within any one calendar month upon premises owned or controlled by him

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

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1 or her, if such vehicles were purchased, acquired or otherwise obtained
2 by such person for the purpose of resale, will be regarded as a dealer.
3 For the purposes of this section, "offers for sale or lease" shall
4 include, but not be limited to, the act of drawing the public's atten-
5 tion to, or the presentation or display of any motor vehicle, including
6 the posting of images of any such vehicle, together with an offer to
7 provide, the provision of, or a representation that such person may
8 provide a service of arranging, assisting, facilitating or effecting the
9 lease of such new motor vehicle, except this meaning shall not apply to
10 any activity of a cooperative or other advertising program or fund as
11 described in any franchise, as such term is defined by subdivision six
12 of section four hundred sixty-two of this title. Except as otherwise
13 provided in subdivisions three, five, six-b, and seven of this section,
14 the term "dealer" shall include a "new motor vehicle dealer" as defined
15 by paragraph f of this subdivision and a "qualified dealer" as defined
16 in paragraph g of this subdivision.

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

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

22 4. "New automobile broker business" means any person who, for a fee,
23 commission or other valuable consideration, regardless of whether such
24 fee, commission or consideration is paid directly by a consumer, offers
25 to provide, provides or represents that he or she will provide a service
26 of purchasing, arranging, assisting, facilitating or effecting the
27 purchase or lease of a previously unregistered automobile; through a new
28 motor vehicle dealer, as agent, broker, or intermediary for a consumer.
29 "New automobile broker business" does not include any person registered
30 as a new vehicle dealer for the new automobile brand or brands for which
31 such services are provided, pursuant to article sixteen of the vehicle
32 and traffic law nor any bona fide employee of such a registered dealer
33 while acting for such dealer.

34 § 3. Subdivision 3-a and paragraph b-3 of subdivision 5 of section 415
35 of the vehicle and traffic law, as added by chapter 477 of the laws of
36 2017, are amended to read as follows:

37 3-a. Automobile broker business [~~registration~~] or new automobile
38 broker business. a. No person shall engage in the automobile broker
39 business, the new automobile broker business or represent or advertise
40 that he or she is engaged or intends to engage in the automobile broker
41 business or new automobile broker business in this state, unless there
42 shall have been issued to him or her a certificate of registration as an
43 automobile broker business or new automobile broker business, as the
44 case may be, by the commissioner under this section pursuant to an
45 application for registration submitted pursuant to subdivision five of
46 this section.

47 b. The commissioner shall not issue any certificate of registration
48 authorized by this section to any dealer, franchisee, franchisor,
49 manufacturer, distributor, distributor branch or factory branch, as such
50 terms are defined in section four hundred sixty-two of this title, or to
51 any subsidiary, affiliate or controlled entity thereof.

52 c. As a condition of any certificate of registration issued pursuant
53 to this subdivision, a new automobile broker business shall have, and
54 continuously maintain, a place of business in this state for which it
55 shall keep and maintain evidence that all necessary approvals, licenses

1 and/or permits have been obtained from all local governing bodies to
2 operate such place of business with customer or client traffic.

3 d. Every registered new automobile broker shall prominently and
4 conspicuously post, in such a manner that it is likely to be noticeable
5 to anyone entering its premises, its official business certificate of
6 registration and a sign, which sign shall clearly state:

7 "(Name of registered new automobile broker) is not a franchised new
8 motor vehicle dealership. We are not authorized to perform recall or
9 original factory warranty work. If you order a search for a new motor
10 vehicle from this broker, we must solicit at least three bona fide bids
11 for a new motor vehicle on your behalf, including from your local deal-
12 er."

13 e. A new automobile broker business shall not provide, offer to
14 provide, or represent that he or she will provide a service of purchas-
15 ing, arranging, assisting, facilitating or effecting the purchase or
16 lease of a previously unregistered automobile with a dealer located in
17 any other state unless such state affords lawful means for the same
18 business activity, such standards and requirements are equivalent to
19 those contained in this article and article thirty-five-B of the general
20 business law, the new automobile broker business is registered, permit-
21 ted or licensed to perform such business activity in such other state
22 and is otherwise in good standing with each governmental agency of such
23 other state responsible for regulating such business activity. The
24 commissioner of motor vehicles shall be empowered to determine the
25 substantial equivalence of such other state laws pertaining to the
26 registration, permitting or licensure of such businesses.

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

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

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

48 (b) No new automobile broker business shall represent or accept
49 payment from, either directly or indirectly, a franchisee, dealer, fran-
50 chisor, manufacturer and/or distributor, as such terms are defined in
51 sections four hundred fifteen and four hundred sixty-two of the vehicle
52 and traffic law.

53 (c) No new automobile broker business shall provide, offer to provide,
54 or represent that he or she will provide a service of purchasing,
55 arranging, assisting, facilitating or effecting the purchase or lease of
56 a previously unregistered automobile with a dealer located in any other

1 state unless such state affords lawful means for the same business
2 activity, such standards and requirements set forth in the laws of such
3 other state are equivalent to those contained in this article, the new
4 automobile broker business has been registered, permitted or licensed to
5 perform such business activity in such other state and is otherwise in
6 good standing with each agency of such other state responsible for regu-
7 lating such business activity. The secretary of state shall be empowered
8 to determine the substantial equivalence of such other state laws
9 pertaining to the regulation of such business activity, including
10 consumer protections in any such law.

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

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

16 § 741-c. Prohibitions related to private information. No person regis-
17 tered under this article shall request, receive, accept, handle, store
18 or transmit the private information, as such term is defined in para-
19 graph (b) of subdivision one of section eight hundred ninety-nine-aa of
20 this chapter, of any consumer.

21 § 6. Section 737 of the general business law, as added by chapter 616
22 of the laws of 1988, is amended to read as follows:

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

28 § 7. The opening paragraph of subdivision 1 of section 738 of the
29 general business law, as amended by chapter 28 of the laws of 2018, is
30 amended to read as follows:

31 Every contract between a consumer and an automobile broker business,
32 which for the purposes of this section shall include new automobile
33 broker businesses, for the purchase of an automobile shall be in writ-
34 ing, shall be dated, shall contain the street address of the automobile
35 broker business and the consumer and shall be signed by the consumer and
36 by the automobile broker business. Every contract shall comply with the
37 requirements set forth in this section and contain the following:

38 § 8. Section 740 of the general business law, as added by chapter 616
39 of the laws of 1988, is amended to read as follows:

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

52 § 9. Section 740-a of the general business law, as added by chapter
53 579 of the laws of 2011 and subdivision 1 as amended by chapter 477 of
54 the laws of 2017, is amended to read as follows:

55 § 740-a. Automobile broker business and new automobile broker business
56 surety bond. 1. Automobile broker businesses shall obtain and continue

1 in effect a surety bond in an amount of one hundred thousand dollars
 2 executed by a surety company authorized to transact business in the
 3 state by the department of financial services of the state or its
 4 successor. New automobile broker businesses shall obtain and continue
 5 in effect a surety bond in an amount of two hundred fifty thousand
 6 dollars executed by a surety company authorized to transact business in
 7 the state by the department of financial services of the state or its
 8 successor. The bonds shall be approved as to form by the secretary of
 9 state and shall be conditioned on the automobile broker business' or new
 10 automobile broker business' payment of all valid bank drafts, including
 11 checks, drawn for the purchase of motor vehicles and safekeeping of all
 12 customer deposits related to the sale of a motor vehicle between the
 13 time of receipt of such customer deposit and the transfer of good title
 14 to the vehicle to the customer.

15 2. Recovery against a bond may be made by a person, including the
 16 state, who obtains a judgment against the automobile broker business or
 17 new automobile broker business for an act or omission on which the bond
 18 is conditioned if the act or omission occurred during the term of the
 19 bond. The total liability imposed on the surety under this section for
 20 all breaches of the bond condition is limited to the face amount of the
 21 bond. Such liability may include, but is not limited to, the amount of
 22 the valid bank drafts, including checks, drawn by the automobile broker
 23 business or new automobile broker business for the purchase of motor
 24 vehicles. In no event shall the surety on a bond be liable for total
 25 claims in excess of the bond amount, regardless of the number or nature
 26 of claims made against the bond or the number of years the bond remained
 27 in force.

28 3. Any surety issuing a bond pursuant to this subdivision shall be
 29 required to provide sixty days' notice to the secretary of state prior
 30 to the effective date of cancellation of the bond.

31 § 10. Section 741 of the general business law, as added by chapter 616
 32 of the laws of 1988, is amended to read as follows:

33 § 741. Deceptive acts and frauds prohibited. 1. It is hereby declared
 34 to be a deceptive trade practice and unlawful for an automobile broker
 35 business or new automobile broker business to misrepresent directly or
 36 indirectly in its advertising, promotional materials, sales presenta-
 37 tion, or in any manner:

38 [~~1-~~] (a) The nature of the services to be performed and in the case of
 39 a new automobile broker that a third party will be paying for any such
 40 services;

41 [~~2-~~] (b) The time within which the services will be performed;

42 [~~3-~~] (c) The cost of the services to be performed; [and

43 ~~4-~~] (d) The ability of the automobile broker business or new automo-
 44 bile broker business to perform the services; and

45 (e) That the automobile broker business or new automobile broker busi-
 46 ness is affiliated with any automobile manufacturer and/or distributor,
 47 including the use of any trademarks or copyrighted material without the
 48 express, written consent of the owner of such material.

49 2. It shall be a fraudulent business practice for an automobile broker
 50 business or new automobile broker business to refuse to disclose to a
 51 motor vehicle dealer or new motor vehicle dealer the registration number
 52 provided by the department of motor vehicles pursuant to section four
 53 hundred fifteen of the vehicle and traffic law. Furthermore, it shall
 54 also be a fraudulent business practice for an automobile broker business
 55 or new automobile broker business to make any misrepresentation to a
 56 motor vehicle dealer or new motor vehicle dealer regarding the eligibil-

1 ity of any consumer for any discounts, reductions or any benefit
2 programs regarding the sale or lease of a motor vehicle.

3 3. It shall be a fraudulent business practice for a new automobile
4 broker business to fail to make a bona fide attempt to obtain a quote or
5 offer from at least three unaffiliated dealers on behalf of a prospec-
6 tive buyer or lessee for a vehicle meeting the prospective buyer or
7 lessee's specifications, including the new motor vehicle dealer located
8 in closest proximity to the address of such prospective buyer or
9 lessee's home or, in the case of any entity, its place of doing busi-
10 ness.

11 4. It shall be a fraudulent business practice for a new automobile
12 broker business to fail to act for the benefit of the prospective buyer
13 or lessee, including by failing to make reasonable efforts to obtain the
14 lowest possible price, down payment, number of payments, amount of
15 payments, finance charges, annual percentage rate and/or fees for a new
16 motor vehicle that meets the specifications of such prospective buyer or
17 lessee.

18 § 11. Section 741-a of the general business law, as amended by chapter
19 477 of the laws of 2017, is amended to read as follows:

20 § 741-a. Advertising. Automobile broker businesses and new automobile
21 broker businesses shall clearly and conspicuously disclose the following
22 in all advertisements in any medium, and in any print advertisement such
23 disclosures shall not appear in any footnotes and shall be situated in
24 the top half of any such advertisement in an easily readable typeface:

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

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

32 (c) Whether any fees may be imposed by the automobile broker business
33 or new automobile broker business for services rendered. Details of such
34 compensation shall be provided by the automobile broker business or new
35 automobile broker business upon request by the consumer; and

36 (d) That no warranty repair services will be provided by the automo-
37 bile broker business or new automobile broker business.

38 § 12. Section 741-b of the general business law, as added by chapter
39 28 of the laws of 2018, is amended to read as follows:

40 § 741-b. [~~Disclosure~~] Disclosures. 1. An automobile broker business
41 or new automobile broker business shall provide a disclosure at the time
42 such automobile broker business or new automobile broker business takes
43 an order to search for a leased or purchased vehicle meeting the
44 prospective buyer or lessee's specifications. Such disclosure shall
45 provide the amount of any fees, commissions or other valuable consider-
46 ation the automobile broker business or new automobile broker business
47 expects to receive for any assistance the automobile broker business
48 provides in effecting the lease or purchase transaction, including any
49 reasonably foreseeable fees or charges, including delivery fees. In the
50 case of an automobile broker business this shall include, if known, any
51 payments from a dealer, lessor or any other person or entity for any
52 assistance the automobile broker business provides in effecting the
53 lease or purchase transaction. If the amount of any such fees, commis-
54 sions or other valuable consideration the automobile broker business
55 expects to receive is unknown at the time of the required disclosure,
56 the automobile broker business shall disclose: (a) whether it has a

1 contract with any dealer, lessor or any other person or entity for the
2 provision of assistance in effecting a lease transaction; and (b) wheth-
3 er the automobile broker business may be compensated by the dealer,
4 lessor or any other person or entity for any assistance in effecting
5 such lease transaction. Nothing in this subdivision shall be construed
6 to permit the payment of any fees, commissions or other valuable consid-
7 eration to a new automobile broker business by any dealer.

8 2. A new automobile broker business shall provide an additional
9 disclosure at the time such new automobile broker business takes an
10 order to search for a vehicle meeting the prospective buyer or lessee's
11 specifications. Such additional disclosure shall state that the broker
12 shall make a bona fide attempt to obtain a bid, quote or offer from at
13 least three unaffiliated dealers on behalf of the prospective buyer or
14 lessee for a vehicle meeting the prospective buyer or lessee's specifi-
15 cations, including from the new motor vehicle dealer of such line make
16 located closest to the home or place of business of such prospective
17 buyer and that the new automobile broker has a duty to act for the bene-
18 fit of the prospective buyer or lessee, including by making reasonable
19 efforts to obtain the lowest possible price, down payment, number of
20 payments, amount of payments, finance charges, annual percentage rate
21 and/or fees.

22 3. Each disclosure required by this section shall be acknowledged in
23 writing by each respective prospective buyer or lessee.

24 § 13. Section 742 of the general business law, as added by chapter 616
25 of the laws of 1988, is amended to read as follows:

26 § 742. Action for recovery of damages by consumer. Any consumer
27 injured by a violation of this article or by the breach by an automobile
28 broker business or new automobile broker business of a contract which
29 has been entered into pursuant to section seven hundred thirty-nine of
30 this article may bring an action for recovery of damages. Judgment shall
31 be entered in favor of a consumer in an amount not to exceed three times
32 the actual damages, but in no case less than the amount paid by the
33 buyer to the automobile broker business or new automobile broker busi-
34 ness. The court may award reasonable attorney's fees to a prevailing
35 plaintiff.

36 § 14. Section 743 of the general business law, as amended by chapter
37 372 of the laws of 2016, is amended to read as follows:

38 § 743. Enforcement [~~by~~]. 1. By attorney general. In addition to the
39 other remedies provided, whenever there shall be a violation of this
40 article, application may be made by the attorney general in the name of
41 the people of the state of New York to a court or justice having juris-
42 diction by a special proceeding to issue an injunction, and upon notice
43 to the defendant of not less than five days, to enjoin and restrain the
44 continuance of such violations; and if it shall appear to the satisfac-
45 tion of the court or justice that the defendant has, in fact, violated
46 this article, an injunction may be issued by such court or justice,
47 enjoining and restraining any further violation, without requiring proof
48 that any person has, in fact, been injured or damaged thereby. In any
49 such proceeding, the court may make allowances to the attorney general
50 as provided in paragraph six of subdivision (a) of section eighty-three
51 hundred three of the civil practice law and rules, and direct restitu-
52 tion. Whenever the court shall determine that a violation of this arti-
53 cle has occurred, the court shall impose a civil penalty of not less
54 than one thousand dollars and not more than three thousand dollars for
55 each violation. In the case of an automobile broker, not less than one
56 thousand dollars and not more than three thousand dollars for each

1 violation; and in the case of a new automobile broker, not less than
2 four thousand dollars and not more than ten thousand dollars for each
3 violation. In connection with any such proposed application, the attorney
4 general is authorized to take proof and make a determination of the
5 relevant facts and to issue subpoenas in accordance with the civil practice
6 law and rules.

7 In connection with any such proposed application, the attorney general
8 is authorized to take proof and make a determination of the relevant
9 facts and to issue subpoenas in accordance with the civil practice law
10 and rules.

11 2. By local authorities. Municipalities may, pursuant to local law,
12 act upon the business activity that is the subject of this article,
13 provided that no local government may diminish the protections or
14 requirements of this article or prevent enforcement of its provisions by
15 appropriate state officials.

16 3. By private party. Any persons injured by any violation of this
17 article may bring an action in his or her own name to enjoin such unlaw-
18 ful act or practice, an action to recover his or her actual damages and
19 statutory damages of four thousand dollars, or both such actions. In the
20 case of a new motor vehicle dealer, injury shall include depriving a new
21 motor vehicle dealer located closest to a lessee or purchaser the oppor-
22 tunity to bid on such lease or purchase as entitled by this article.
23 Damages shall include incentive payments, bonuses, holdbacks or similar
24 payments that would have been realized had a lessee or purchaser
25 purchased or leased such vehicle from the new motor vehicle dealer in
26 closest proximity to such lessee or purchaser but for the actions of a
27 person who knowingly aided the violation of the provisions of this arti-
28 cle. In any such judicial action or proceeding, the court may award
29 reasonable attorney's fees and costs. Such actions may be brought
30 regardless of whether or not the underlying violation is consumer-or-
31 iented or has a public impact. The court may, in its discretion,
32 increase the award of damages if the court finds the defendant willfully
33 or knowingly violated this section. The court shall award reasonable
34 attorney's fees and costs to a prevailing plaintiff.

35 § 15. Section 415 of the vehicle and traffic law is amended by adding
36 two new subdivisions 21 and 22 to read as follows:

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

53 b. In addition to any civil action brought by the commissioner or any
54 person appointed by him, any persons injured by any violation of subdivi-
55 sion three-a and paragraph b-3 of subdivision five of this section,
56 shall be entitled to sue for and have injunctive relief and damages

1 against, any party in violation of subdivision three-a and paragraph b-3
2 of subdivision five of this section in any court of the state having
3 jurisdiction over the parties. In the case of a new motor vehicle deal-
4 er, injury shall include depriving the new motor vehicle dealer located
5 closest to a lessee or purchaser the opportunity to bid on such lease or
6 purchase as entitled by this article. Damages shall include incentive
7 payments, bonuses, holdbacks or similar payments that would have been
8 realized had a lessee or purchaser purchased or leased such vehicle from
9 the new motor vehicle dealer in closest proximity to such lessee or
10 purchaser but for the actions of a person who knowingly aided the
11 violation of the provisions of this article. In any such judicial action
12 or proceeding, the court may award reasonable attorney's fees and costs.
13 Such actions may be brought regardless of whether or not the underlying
14 violation is consumer-oriented or has a public impact. The court may, in
15 its discretion, increase the award of damages if the court finds the
16 defendant willfully or knowingly violated this section. The court shall
17 award reasonable attorney's fees and costs to a prevailing plaintiff.

18 22. New automobile broker record requirements. a. New automobile
19 brokers shall maintain a permanently bound book in which shall be
20 recorded the make, model, year color and vehicle identification number
21 of all previously unregistered automobiles for which such broker has
22 provided a service of purchasing, arranging, assisting, facilitating or
23 effecting the purchase or lease of such automobile within any preceding
24 six-year period. Such book shall also have recorded a record of the
25 name and address of the purchaser or lessor of such automobile, the date
26 of sale or commencement of lease of such automobile and the name and
27 address of the dealer from which the automobile was purchased or leased.

28 b. New automobile brokers shall maintain a permanently bound book in
29 which shall be recorded all completed orders to search for a previously
30 unregistered automobile. Such book shall also have recorded a record of
31 the date of such order, the name and address of the person or entity
32 ordering such search, the automobile specifications provided by such
33 prospective buyer or lessee and the name and address of the dealers
34 solicited for a quote or offer on behalf of such prospective buyer or
35 lessee.

36 c. Such books shall be open for inspection by the commissioner, or his
37 or her agent, during reasonable business hours. The commissioner may
38 establish by rule the form of any such book.

39 d. As an alternative to a bound book, a new automobile broker may use
40 a computer and software approved by the department to maintain the
41 records required to be kept by this section, provided all information
42 required by paragraphs a and b of this section are recorded and the
43 records conform to such additional requirements as determined by the
44 commissioner.

45 § 16. Section 465 of the vehicle and traffic law is amended by adding
46 a new subdivision 8 to read as follows:

47 8. A franchisor may require a franchisee to submit to a franchisor the
48 name and registration number of any new automobile broker business that
49 arranged, assisted, facilitated or effected the purchase or lease of any
50 vehicle from such dealer. A franchisor may charge back the franchisee
51 any sales, advertising or marketing incentive payment or any other
52 payment or benefit associated with the sale or lease of such vehicle for
53 failure to submit such information.

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