

# STATE OF NEW YORK

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1932

2021-2022 Regular Sessions

## IN ASSEMBLY

January 13, 2021

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Introduced by M. of A. CARROLL, ABBATE, STIRPE, REYES, TAYLOR, CYMBROW-ITZ, DICKENS, ENGLEBRIGHT, D. ROSENTHAL, GALEF, GOTTFRIED, DeSTEFANO, RAMOS, MIKULIN, SAYEGH, SMITH, WILLIAMS, COOK, ABINANTI, QUART, SEAWRIGHT, REILLY, B. MILLER, ROZIC, FERNANDEZ, EPSTEIN, CRUZ, STECK, PHEFFER AMATO, PICHARDO, RA, BENEDETTO, BYRNE, JACOBSON, HYNDMAN, PERRY, THIELE, SOLAGES, LAVINE, STERN, GRIFFIN, JONES, BUTTENSCHON, BRAUNSTEIN, FALL, FRONTUS, PAULIN, L. ROSENTHAL, WALLACE, DILAN, AUBRY, JEAN-PIERRE, DARLING, WALKER -- Multi-Sponsored by -- M. of A. DE LA ROSA, FITZPATRICK, HEVESI, SIMON -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, the vehicle and traffic law and the personal property 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 736 of the general business law,  
2 as amended by chapter 28 of the laws of 2018, is amended and a new  
3 subdivision 4 is added to read as follows:  
4 1. "Automobile broker business" means any person who, for a fee,  
5 commission or other valuable consideration, regardless of whether such  
6 fee, commission, or consideration is paid directly by a consumer, offers  
7 to provide, provides, or represents that he or she will provide a  
8 service of purchasing, arranging, assisting, facilitating or effecting  
9 the purchase or lease of an automobile as agent, broker, or intermediary  
10 for a consumer. "Automobile broker business" does not include any person  
11 registered as a new motor vehicle dealer or qualified dealer pursuant to  
12 article sixteen of the vehicle and traffic law nor any bona fide employ-  
13 ee of a registered new motor vehicle dealer or qualified dealer while  
14 acting for such new motor vehicle dealer or qualified dealer, or any  
15 person who sells, offers for sale or lease or acts as agent, broker or  
16 intermediary in effecting the purchase or lease of three or fewer auto-

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

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mobiles in any calendar year, any national service which aggregates information for consumers, but does not otherwise have contact with consumers, ~~[or]~~ any motor vehicle franchisor, manufacturer, or distributor, distributor branch or factory branch registered under article sixteen of the vehicle and traffic law.

4. "New motor vehicle" shall have the same meaning as defined in subdivision eleven of section four hundred sixty-two of the vehicle and traffic law.

§ 2. Section 736-a of the general business law, as added by chapter 477 of the laws of 2017, is amended to read as follows:

§ 736-a. Registration required. 1. (a) No person shall engage in business as an automobile broker business, as defined in section seven hundred thirty-six of this article, without first having been issued a certificate of registration for an automobile broker business pursuant to paragraph c of subdivision seven of section four hundred fifteen of the vehicle and traffic law. A certificate of registration for an automobile broker business shall be valid for a period of two years.

(b) No automobile broker business shall represent or accept payment from, either directly or indirectly, a franchisee, dealer, franchisor, manufacturer, distributor, distributor branch and/or factory branch, as such terms are defined in sections four hundred fifteen and four hundred sixty-two of the vehicle and traffic law.

(c) No automobile broker business shall perform any services involving the purchasing, arranging, assisting, facilitating or effecting the purchase or lease of an automobile as agent, broker, or intermediary for a consumer, unless done pursuant to a contract that complies with the provisions of section seven hundred thirty-eight of this article.

2. A certificate of registration for an automobile broker business shall not permit the registrant to display for sale or lease any new or used motor vehicles without registration as a dealer under section four hundred fifteen of the vehicle and traffic law.

3. Any person that sells or leases five or more vehicles in a calendar year to or through one or more automobile broker businesses shall be deemed to be dealing in motor vehicles as that term is used in paragraph a of subdivision one of section four hundred fifteen of the vehicle and traffic law.

4. The commissioner of motor vehicles shall adopt rules and regulations necessary to effectuate the provisions of this section, including regulations that require the disclosure of the name, address, and registration number of an automobile broker business that provided the service of arranging, assisting, facilitating or effecting the purchase or lease of any new motor vehicle, and the fee collected by the broker from the consumer for providing such service. Such rules and regulations shall require that such information of the automobile broker business and its fee for service be printed on any invoice, bill of sale, or buyer's order, and on any application for registration or title submitted by any dealer to the department of motor vehicles on behalf of the consumer related to such purchased or leased motor vehicle.

§ 3. The general business law is amended by adding a new section 737-a to read as follows:

§ 737-a. Bona fide bid soliciting required. 1. On behalf of each consumer executing a contract that conforms to the requirements of subdivision three of section seven hundred thirty-eight of this article, an automobile broker business shall solicit a bid, from at least three new motor vehicle dealers of the same line-make, that meets the specifications of such prospective buyer or lessee, including from the new

1 motor vehicle dealer located in closest proximity to the home address of  
2 a prospective buyer or lessee of a new motor vehicle or, in the case of  
3 an entity, the place of doing business of such prospective buyer or  
4 lessee of a new motor vehicle. Whenever an automobile broker business  
5 may choose bid specifications on behalf of a consumer, such automobile  
6 broker business shall solicit a bid matching such specifications from at  
7 least three new motor vehicle dealers of the same line-make, including  
8 from the new motor vehicle dealer located in closest proximity to the  
9 home address of a prospective buyer or lessee of a new motor vehicle or,  
10 in the case of an entity, the place of doing business of such prospec-  
11 tive buyer or lessee of a new motor vehicle.

12 2. At a minimum, an automobile broker business that solicits a bid  
13 pursuant to subdivision one of this section shall request the following  
14 information as part of any solicitation to a new motor vehicle dealer:

- 15 (a) price or lease costs;
- 16 (b) down or similar payment;
- 17 (c) number of payments;
- 18 (d) amount of installment or monthly payments;
- 19 (e) make, model, year of production, and color of any available motor  
20 vehicle;
- 21 (f) whether the motor vehicle has accessories specifically requested  
22 by the consumer;
- 23 (g) fees;
- 24 (h) where applicable, finance charges and/or annual percentage rate;
- 25 (i) estimated delivery date of the automobile;
- 26 (j) statement of whether or not the manufacturer's warranty accompany-  
27 ing the motor vehicle is the same warranty as that furnished to purchas-  
28 ers of that make motor vehicle from an authorized dealer; and
- 29 (k) the identity of the new motor vehicle dealer offering a bid.

30 3. The contents of each bid by a motor vehicle dealer, solicited  
31 pursuant to subdivision one of this section, shall be provided to each  
32 consumer on whose behalf such bid has been solicited, regardless of the  
33 particulars or content of any such bid.

34 4. The commissioner of motor vehicles shall adopt rules and regu-  
35 lations necessary to effectuate the provisions of this section.

36 § 4. The opening paragraph and paragraph (e) of subdivision 1 and  
37 subdivisions 3 and 4 of section 738 of the general business law, the  
38 opening paragraph and paragraph (e) of subdivision 1 as amended and  
39 subdivision 4 as added by chapter 28 of the laws of 2018 and subdivision  
40 3 as amended by chapter 477 of the laws of 2017, are amended to read as  
41 follows:

42 Every contract between a consumer and an automobile broker business  
43 for the purchase of [~~an automobile~~] a motor vehicle, other than a new  
44 motor vehicle, shall be in writing, shall be dated, shall contain the  
45 street address of the automobile broker business and the consumer and  
46 shall be signed by the consumer and by the automobile broker business.  
47 Every contract shall comply with the requirements set forth in this  
48 section and contain the following:

49 (e) A description of any other services and an itemization of the  
50 charges for each. Such description shall include disclosure of the auto-  
51 mobile dealer from which the automobile was purchased, as well as all  
52 fees, commissions or other valuable [~~considerations paid by an automo-~~  
53 ~~bile dealer~~] consideration owed by the consumer to the automobile broker  
54 business for selling, arranging, assisting or effecting the sale of an  
55 automobile as agent, broker, or intermediary between the consumer and  
56 the automobile dealer.

3. Every contract between a consumer and an automobile broker business for the service of arranging, assisting, facilitating or effecting the purchase or lease of a new motor vehicle shall be in writing, shall be dated, shall contain the street address of the automobile broker business and the consumer, and shall be signed by the consumer and by the automobile broker business. Every such contract shall comply with the requirements set forth in this section and contain the following provisions, which shall be printed in at least twelve-point bold type and shall not be negated or superseded by any additional provision:

(a) A title, across the top of the document in at least sixteen-point bold type, of "Contract for Automobile Brokering Services for a New Motor Vehicle".

(b) A statement of whether a solicited new motor vehicle is or will be manufactured in accordance with United States safety and environmental specifications and is or will be certified by the manufacturer as such; provided, if the new motor vehicle is not or will not be manufactured in accordance with United States safety and environmental specifications, and the consumer has retained the automobile broker business to arrange for the modification of the new motor vehicle to meet such specifications, the name and street address of the modification facility and a statement in immediate proximity to such information that the automobile broker business assumes full financial responsibility that the new motor vehicle will be properly modified to meet all United States safety and environmental specifications.

(c) A statement that the consumer may cancel the contract for automobile brokering services for a new motor vehicle for any reason within three days of the execution of such contract and that the consumer has the right to a full refund within ten business days following receipt of the notice of cancellation.

(d) A statement that, if the requested new motor vehicle cannot be procured by the automobile broker business within thirty days following the date of execution of the contract for automobile brokering services for a new motor vehicle, the consumer has the right to cancel the contract and to receive a full refund within ten business days following receipt of the request for a refund, unless the delay in delivery is attributable to the consumer.

(e) A statement that the consumer shall be provided with the contents of each bid received by the automobile broker business in response to its solicitation on behalf of such consumer.

(f) The amount of the fee to be paid by the consumer to the automobile broker business for the service of arranging, assisting, facilitating or effecting the purchase or lease of a new motor vehicle.

(g) A statement that the single fee authorized by such contract for automobile brokering services for a new motor vehicle is inclusive of all charges incident to the purchasing, arranging, assisting, facilitating or effecting the purchase or lease of such new motor vehicle by the automobile broker business as agent, broker, or intermediary and that no other charge or expense whatsoever shall be taken, received, reserved or contracted for by the automobile broker business for such services.

4. The contract for automobile brokering services for a new motor vehicle shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the contract and easily detachable, and which shall contain in at least twelve-point type the following:

"Notice of Cancellation You may cancel this Contract for Automobile Brokering Services for a New Motor Vehicle, without any penalty or obli-

gation, within three days from the date that a copy of an executed contract is received by you. You may also cancel this contract, without penalty or obligation, if the automobile broker business does not produce a bid meeting your specifications within thirty days of the date of execution of this contract.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to (name of automobile broker business) at (address of automobile broker business) not later than midnight of the third day, or, in the case of an automobile broker business not producing a bid meeting your specifications within thirty days, not later than midnight of the thirtieth day, following your receipt of a signed contract.

I hereby cancel this transaction.

(signature of consumer)

(date)"

5. An automobile broker business shall deliver to the consumer or mail to him or her at the address shown on ~~the~~ any contract required by this section, an executed copy thereof.

~~[4.-An]~~ 6. In addition to the brokering services agreement required by subdivision one of this section, an automobile broker business in any transaction involving the lease of a vehicle shall provide the retail lessee with a retail lease agreement as provided for in section three hundred thirty-seven of the personal property law. The automobile broker shall provide a written disclosure of the amount of any fee, commission or other consideration paid or expected to be paid by the lessor to the automobile broker business in connection with a transaction involving the lease of a vehicle. Such disclosure shall be signed by the retail lessee. The automobile broker business shall provide the retail lessee with a signed copy of such disclosure together with the retail lease agreement referenced herein. Nothing in this section shall be construed to permit the delivery of an executed retail lease agreement to a new motor vehicle by a person other than the prospective lessee.

§ 5. Subdivision 1 of section 740-a of the general business law, as amended by chapter 477 of the laws of 2017, is amended to read as follows:

1. Automobile broker businesses shall obtain and continue in effect a surety bond in an amount of ~~one~~ two hundred fifty thousand dollars executed by a surety company authorized to transact business in the state by the department of financial services of the state or its successor. 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 and safekeeping of all customer deposits related to the sale of a motor vehicle between the time of receipt of such customer deposit and the transfer of good title to the vehicle to the customer.

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

§ 741. Deceptive acts and frauds prohibited. 1. It is hereby declared to be a deceptive trade practice and unlawful for an automobile broker business to misrepresent directly or indirectly in its advertising, promotional materials, sales presentation, or in any manner:

~~[1-]~~ (a) The nature of the services to be performed and that a third party will be paying for any such services;

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

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



1 ~~4-]~~ (d) The ability of the automobile broker business to perform the  
2 services; and

3 (e) That the automobile broker business is affiliated with any new  
4 motor vehicle manufacturer, distributor, distributor branch and/or  
5 factory branch including the use of any trademarks or copyrighted mate-  
6 rial without the express, written consent of the owner of such material.

7 2. It shall be a fraudulent business practice for an automobile broker  
8 business to refuse to disclose its registration number, issued either by  
9 the department of motor vehicles pursuant to section four hundred  
10 fifteen of the vehicle and traffic law or a municipality, to a motor  
11 vehicle dealer. Furthermore, it shall be a fraudulent business practice  
12 for an automobile broker business to make any misrepresentation to a  
13 motor vehicle dealer or new motor vehicle dealer regarding the eligibil-  
14 ity of any consumer for any discounts, reductions or any benefit  
15 programs regarding the sale or lease of a motor vehicle.

16 3. It shall be a fraudulent business practice for an automobile broker  
17 business to advertise new motor vehicles, through any print, electronic  
18 or digital signal or medium, written or verbal statement or word,  
19 design, device, sound or any combination of any such method or medium,  
20 without disclosing that it is not a licensed motor vehicle dealer and is  
21 not an authorized satellite location for any particular licensed motor  
22 vehicle dealer.

23 4. It shall be a fraudulent business practice for an automobile broker  
24 business to advertise through any print, electronic or digital signal or  
25 medium, written or verbal statement or word, design, device, sound or  
26 any combination of any such method or medium, that would lead a reason-  
27 able consumer to conclude that the automobile broker business is a  
28 licensed new motor vehicle dealer.

29 5. It shall be a fraudulent business practice for an automobile broker  
30 business to maintain any website without including a text box with the  
31 following statement in no less than eighteen-point boldface type on the  
32 splash page: "(Broker name) is not a licensed new motor vehicle dealer  
33 in the State of New York, nor is it an authorized affiliate of any  
34 licensed new motor vehicle dealer in the State of New York".

35 6. It shall be a fraudulent business practice for an automobile broker  
36 business to include any pricing or financing offers or promotions in any  
37 advertisement, including any print, electronic or digital signal or  
38 medium, written or verbal statement or word, design, device, sound or  
39 any combination of any such method or medium.

40 7. It shall be a fraudulent business practice for an automobile broker  
41 business to gain access to or use, or represent or advertise that it may  
42 access or use, a portal, computer, or internet account owned by or  
43 reserved for a new motor vehicle dealer to access or use one or more  
44 finance sources that provide automotive-related loans, or purchases  
45 retail installment contracts or lease contracts for motor vehicles.

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

48 § 741-b. [~~Disclosure~~] Disclosures required by brokers. 1. An automo-  
49 bile broker business shall generate and provide a disclosure at the time  
50 such automobile broker business takes an order to search for a leased or  
51 purchased vehicle meeting the prospective buyer or lessee's specifica-  
52 tions. Such disclosure shall provide the amount of any fees, commissions  
53 or other valuable consideration the automobile broker business expects  
54 to receive, if known, from [~~a dealer, lessor or~~] any [~~other~~] person or  
55 entity for any assistance the automobile broker business provides in  
56 effecting the purchase or lease transaction. If the amount of any such

1 fees, commissions or other valuable consideration the automobile broker  
2 business expects to receive is unknown at the time of the required  
3 disclosure, the automobile broker business shall disclose[~~+(a)~~] whether  
4 it has a contract with any dealer, lessor or any other person or entity  
5 for the provision of assistance in effecting a purchase or lease trans-  
6 action[~~+, and (b) whether the automobile broker business may be compen-~~  
7 ~~sated by the dealer, lessor or any other person or entity for any~~  
8 ~~assistance in effecting such lease transaction~~]. Nothing in this subdivi-  
9 vision shall be construed to permit the payment of any fees, commissions  
10 or other valuable consideration to an automobile broker business by any  
11 motor vehicle dealer.

12 2. An automobile broker business shall generate and provide an addi-  
13 tional disclosure to the consumer at the time such automobile broker  
14 business takes an order to search for a motor vehicle meeting the  
15 prospective buyer or lessee's specifications. Such additional disclosure  
16 shall state the following:

17 (a) that the automobile broker business shall make a bona fide attempt  
18 to obtain a bid, quote or offer from at least three unaffiliated dealers  
19 on behalf of the prospective buyer or lessee for a motor vehicle meeting  
20 the prospective buyer or lessee's specifications, including from the new  
21 motor vehicle dealer of such line-make located closest to the home or  
22 place of business of such prospective buyer for a consumer that seeks a  
23 new motor vehicle;

24 (b) that the automobile broker business shall provide to the consumer  
25 all contents of each bid made by a motor vehicle dealer in response to  
26 the solicitation of the automobile broker business; and

27 (c) that the automobile broker business has a duty to act for the  
28 benefit of the prospective buyer or lessee.

29 3. Each disclosure required by this section to be made to a consumer  
30 shall be acknowledged in writing by each consumer.

31 4. Prior to the execution of any purchase contract or lease for an  
32 automobile, an automobile broker business shall provide each consumer  
33 with all disclosures required to be made by a dealer.

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

36 § 741-c. Private information security. 1. An automobile broker busi-  
37 ness shall report annually to the department of motor vehicles its  
38 compliance with sections three hundred ninety-nine-cc, three hundred  
39 ninety-nine-dd, three hundred ninety-nine-ddd, three hundred ninety-  
40 nine-h, three hundred ninety-nine-oo, three hundred ninety-nine-p, three  
41 hundred ninety-nine-pp, and eight hundred ninety-nine-bb of this chap-  
42 ter. For the purposes of subdivision two of section eight hundred nine-  
43 ty-nine-bb of this chapter, an automobile broker business shall not be  
44 considered a small business as that term is defined in that section.

45 2. In addition to the requirements of subdivision one of this section,  
46 an automobile broker business shall:

47 (a) keep and maintain all consumer records containing private informa-  
48 tion in a safe place that is not accessible to persons not employed by  
49 the automobile broker business, including by keeping and maintaining a  
50 clear and permanent physical barrier from other businesses that share or  
51 neighbor its place of business;

52 (b) have a mailbox at such place of business dedicated only to the  
53 automobile broker business; and

54 (c) have a method of locking security items, including a locking cabi-  
55 net or safe.

1 3. No transaction for the purchase or lease of a previously unregis-  
2 tered motor vehicle that was arranged, assisted, facilitated or effected  
3 by an automobile broker business shall be valid unless the consumer  
4 personally delivers an executed purchase contract or lease, and, where  
5 applicable, financing agreement, to the place of business of the dealer  
6 from which such vehicle will be purchased or leased and such dealer  
7 verifies the identity of such consumer.

8 § 9. Section 743 of the general business law, as amended by chapter  
9 372 of the laws of 2016, is amended to read as follows:

10 § 743. Enforcement [~~by~~]. 1. By attorney general. In addition to the  
11 other remedies provided, whenever there shall be a violation of this  
12 article, application may be made by the attorney general in the name of  
13 the people of the state of New York to a court or justice having juris-  
14 diction by a special proceeding to issue an injunction, and upon notice  
15 to the defendant of not less than five days, to enjoin and restrain the  
16 continuance of such violations; and if it shall appear to the satisfac-  
17 tion of the court or justice that the defendant has, in fact, violated  
18 this article, an injunction may be issued by such court or justice,  
19 enjoining and restraining any further violation, without requiring proof  
20 that any person has, in fact, been injured or damaged thereby. In any  
21 such proceeding, the court may make allowances to the attorney general  
22 as provided in paragraph six of subdivision (a) of section eighty-three  
23 hundred three of the civil practice law and rules, and direct restitu-  
24 tion. Whenever the court shall determine that a violation of this arti-  
25 cle has occurred, the court shall impose a civil penalty of not less  
26 than [~~one~~] four thousand dollars and not more than [~~three~~] ten thousand  
27 dollars for each violation. In connection with any such proposed appli-  
28 cation, the attorney general is authorized to take proof and make a  
29 determination of the relevant facts and to issue subpoenas in accordance  
30 with the civil practice law and rules.

31 2. By local authorities. (a) Municipalities may, pursuant to local  
32 law, act upon the business activity that is the subject of this article,  
33 provided that no local government may diminish the protections or  
34 requirements of this article or prevent enforcement of its provisions by  
35 appropriate state officials.

36 (b) The provisions of this article may be enforced in the same manner  
37 as set forth in subdivision one of this section by the director of a  
38 municipal consumer affairs office or a business integrity commission, or  
39 by the town attorney, city corporation counsel, or other lawfully desig-  
40 nated enforcement officer of a municipality or local government, and all  
41 monies collected thereunder shall be retained by such municipality or  
42 local government, provided that no local government may prevent enforce-  
43 ment of its provisions by appropriate state officials.

44 3. By private party. Any persons that are or may be injured by any  
45 violation of this article may bring an action in his or her own name  
46 against an automobile broker business to enjoin such unlawful act or  
47 practice, an action to recover his or her damages and statutory damages  
48 of not less than four thousand dollars and not more than ten thousand  
49 dollars for each violation, or both such actions. Injury shall include,  
50 but not be limited to, lost sales on account of deceptive or unfair  
51 advertising and depriving a new motor vehicle dealer located closest to  
52 a lessee or purchaser the opportunity to bid on such lease or purchase  
53 as entitled by this article. Damages shall include, but not be limited  
54 to, lost sales and the value of incentive payments, bonuses, holdbacks  
55 or similar payments that would have been realized had a lessee or  
56 purchaser purchased or leased such vehicle from the new motor vehicle



1 dealer in closest proximity to such lessee or purchaser but for the  
2 actions of a person who knowingly aided the violation of the provisions  
3 of this article. Nothing in this section shall require a franchisor,  
4 manufacturer, or distributor to grant a new motor vehicle dealer a bene-  
5 fit under an incentive, bonus, holdback or similar payment that the new  
6 motor vehicle dealer did not earn or for which the new motor vehicle  
7 dealer did not complete or qualify. Such actions may be brought regard-  
8 less of whether or not the underlying violation is consumer-oriented or  
9 has a public impact. Given the remedial nature of this subdivision,  
10 standing to bring an action under this subdivision shall be liberally  
11 construed and shall be available to the fullest extent otherwise permit-  
12 ted by law. The court may, in its discretion, award treble damages if  
13 the court finds the defendant willfully or knowingly violated this arti-  
14 cle. The court shall award reasonable attorney's fees and costs to a  
15 prevailing plaintiff.

16 § 10. Paragraph a of subdivision 1 of section 415 of the vehicle and  
17 traffic law, as amended by chapter 554 of the laws of 2015, is amended  
18 to read as follows:

19 a. "Dealer" means a person engaged in the business of buying, selling  
20 or dealing in motor vehicles, motorcycles or trailers, other than mobile  
21 homes or manufactured homes, at retail or wholesale; except, however,  
22 trailers with an unladen weight of less than one thousand pounds. For  
23 the purposes of this section, a "mobile home" or "manufactured home"  
24 means a mobile home or manufactured home as defined in section one  
25 hundred twenty-two-c of this chapter. Any person who sells, or offers  
26 for sale or lease more than five motor vehicles, motorcycles or trailers  
27 in any calendar year or who displays or permits the display of three or  
28 more motor vehicles, motorcycles or trailers for sale at any one time or  
29 within any one calendar month upon premises owned or controlled by him  
30 or her, if such vehicles were purchased, acquired or otherwise obtained  
31 by such person for the purpose of resale, will be regarded as a dealer.  
32 For the purposes of this section, "offers for sale or lease" shall  
33 include, but not be limited to, the act of drawing the public's atten-  
34 tion to, or the presentation or display of any motor vehicle, including  
35 the posting of images of any such vehicle, together with a suggested  
36 retail price, lease cost or financing rate for such vehicle and an offer  
37 to provide, the provision of, or a representation that such person may  
38 provide a service of arranging, assisting, facilitating or effecting the  
39 purchase or lease of such new motor vehicle, except this meaning shall  
40 not apply to any activity of a cooperative or other advertising program  
41 or fund as described in any franchise, as such term is defined by subdi-  
42 vision six of section four hundred sixty-two of this title, or the  
43 display of aggregated information and images by a national service that  
44 otherwise does not have contact with consumers. Except as otherwise  
45 provided in subdivisions three, five, six-b, and seven of this section,  
46 the term "dealer" shall include a "new motor vehicle dealer" as defined  
47 by paragraph f of this subdivision and a "qualified dealer" as defined  
48 in paragraph g of this subdivision.

49 § 11. Subdivision 3 of section 415 of the vehicle and traffic law is  
50 amended by adding a new paragraph d to read as follows:

51 d. It is hereby declared to be a fraudulent practice, for the purposes  
52 of paragraph c of subdivision nine of this section, for a dealer to use  
53 any subsidiary corporation, affiliated corporation, or any other  
54 controlled corporation, partnership, association, business or person to  
55 accomplish what would otherwise be unlawful conduct under this article  
56 or article thirty-five-b of the general business law, including request-

1 ing that an automobile broker business represent such dealer in generat-  
2 ing a sale or lease or making payment to, either directly or indirectly,  
3 an automobile broker business.

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

7 3-a. Automobile broker business registration. a. No person shall  
8 engage in the automobile broker business or represent or advertise that  
9 he or she is engaged or intends to engage in the automobile broker busi-  
10 ness in this state, unless there shall have been issued to him or her a  
11 certificate of registration as an automobile broker business by the  
12 commissioner under this section pursuant to an application for registra-  
13 tion submitted pursuant to subdivision five of this section. Such regis-  
14 tration shall be effective for a period not exceeding two years. At the  
15 discretion of the commissioner a registration may be renewed for a peri-  
16 od of up to two years upon application therefor, in such form as the  
17 commissioner may prescribe, and a showing of proof of satisfaction of  
18 the requirements of section seven hundred forty-a of the general busi-  
19 ness law, and upon payment of the fee as herein prescribed.

20 b. The commissioner shall not issue or renew a certificate of regis-  
21 tration authorized by this subdivision to any dealer, franchisee, fran-  
22 chisor, manufacturer, distributor, distributor branch or factory branch,  
23 as such terms are defined in section four hundred sixty-two of this  
24 title, or to any subsidiary, affiliate, employee or controlled person or  
25 entity thereof.

26 c. As a condition of any certificate of registration issued or renewed  
27 pursuant to this subdivision, an automobile broker business shall have,  
28 and continuously maintain, a place of business in this state for which  
29 it shall keep and maintain evidence that all necessary approvals,  
30 licenses and/or permits have been obtained from all local governing  
31 bodies to operate such place of business with customer or client traf-  
32 fic. No more than one automobile broker business shall operate at any  
33 single location and no automobile broker business shall operate at the  
34 same location as a new motor vehicle dealer.

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

39 "(Name of registered automobile broker) is not a franchised new motor  
40 vehicle dealer. We are not authorized or approved by a manufacturer or  
41 distributor to sell a new motor vehicle or perform recall or original  
42 factory warranty work. If you order a search for a new motor vehicle  
43 from this broker, we must make a bona fide effort to solicit bids from  
44 at least three unaffiliated new motor vehicle dealers for a new motor  
45 vehicle on your behalf, including from your local dealer."

46 e. As a condition of any certificate of registration issued or renewed  
47 pursuant to this subdivision, and before performing any broker services  
48 related to a new motor vehicle, an automobile broker business shall  
49 attest in writing to each consumer, that the broker: (i) is not a fran-  
50 chised new motor vehicle dealer; (ii) is not authorized or approved by a  
51 manufacturer or distributor to sell a new motor vehicle or perform  
52 recall or original factory warranty work; and (iii) that the broker  
53 shall make a bona fide effort to solicit bids from at least three unaf-  
54 filiated new motor vehicle dealers that sell a new motor vehicle or any  
55 line or make desired by such consumer, including from the consumer's  
56 local dealer.

1 f. It is hereby declared to be a fraudulent practice, for the purposes  
2 of paragraph c of subdivision nine of this section, for an automobile  
3 broker business to draw the public's attention to, or present or display  
4 any new motor vehicle, including by posting images of any such vehicle,  
5 together with a suggested retail price, lease cost or financing rate for  
6 such vehicle and an offer to provide, the provision of, or a represen-  
7 tation that such person may provide a service of arranging, assisting,  
8 facilitating or effecting the purchase or lease of such new motor vehi-  
9 cle.

10 g. Nothing in this subdivision shall be construed to prohibit a fran-  
11 chisor, manufacturer, or distributor from sponsoring activities intended  
12 to generate leads toward the sale or lease of a new motor vehicle by a  
13 franchisee.

14 b-3. In the case of an application for registration as an automobile  
15 broker business, either for initial registration or renewal thereof, the  
16 name and address of the surety company which will issue the bond  
17 required by subdivision one of section seven hundred forty-a of the  
18 general business law, a copy of such bond certified by the secretary of  
19 state or one of his or her agents, and a statement indicating any inter-  
20 est in the applicant's business entity by a person or entity described  
21 in paragraph f of subdivision one or paragraph f of subdivision seven of  
22 this section, or any employee or person, controlling person or entity  
23 thereof. If the bond is to be issued by an authorized agent of the sure-  
24 ty company licensed by the state, then the name and address of that  
25 agent may be provided in lieu of the information concerning the surety  
26 company.

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

29 21. Penalties and rights of action for failure to obtain a certificate  
30 of registration as an automobile broker pursuant to subdivision three-a  
31 and paragraph b-3 of subdivision five of this section. In addition to  
32 any other action authorized by law, the commissioner, or any person  
33 designated by him or her, may proceed against a party who has operated  
34 as an automobile broker without certificate of registration in accord-  
35 ance with the provisions of this article, in any one or more proceedings  
36 and by order to enjoin such unlawful acts or practices and requiring the  
37 offending party to pay the people of this state a penalty in a sum not  
38 less than four thousand dollars and not more than ten thousand dollars  
39 for each violation found to have been committed. Civil penalties  
40 assessed under this subdivision shall be paid to the commissioner for  
41 deposit into the state treasury, and unpaid civil penalties may be  
42 recovered by the commissioner in a civil action in the name of the  
43 commissioner. For the purposes of this subdivision, a "violation" shall  
44 mean each vehicle sold or leased to a consumer for which the party that  
45 failed to obtain certification as an automobile broker has served as an  
46 automobile broker.

47 22. Automobile broker record requirements. a. Automobile brokers shall  
48 maintain a permanently bound book in which shall be recorded the make,  
49 model, year, color and vehicle identification number of all previously  
50 unregistered automobiles for which such broker has provided a service of  
51 purchasing, arranging, assisting, facilitating or effecting the purchase  
52 or lease of such automobile within any preceding six-year period. Such  
53 broker shall also record in such book the name and address of the  
54 purchaser or lessor of such automobile, the date of sale or commencement  
55 of lease of such automobile and the name and address of the dealer from  
56 which the automobile was purchased or leased.

1 b. Automobile broker businesses shall maintain a permanently bound  
2 book in which shall be recorded all completed orders to search for a  
3 previously unregistered automobile within any preceding six-year period.  
4 Such broker shall also record in such book the date of such order, the  
5 name and address of the person or entity ordering such search, the auto-  
6 mobile specifications provided by such prospective buyer or lessee and  
7 the name and address of the dealers solicited for a quote or offer on  
8 behalf of such prospective buyer or lessee.

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

12 d. As an alternative to a bound book, an automobile broker may use a  
13 computer and software approved by the department to maintain the records  
14 required to be kept by this section, provided all information required  
15 by paragraphs a and b of this section are recorded and the records  
16 conform to such additional requirements as determined by the commission-  
17 er.

18 § 14. Subdivision 5 of section 337 of the personal property law is  
19 amended by adding a new paragraph (m) and such section is amended by  
20 adding a new subdivision 4-a to read as follows:

21 4-a. Any credit application, or other request for a determination of  
22 creditworthiness, in furtherance of a retail lease agreement for a new  
23 motor vehicle, that is submitted to a lessor or anticipated assignee  
24 that is a manufacturer, as such term is defined in subdivision nine of  
25 section four hundred sixty-two of the vehicle and traffic law, a person  
26 under contract with a manufacturer to serve as holder, or a captive  
27 finance source, as such term is defined by subdivision sixteen of  
28 section four hundred sixty-two of the vehicle and traffic law, shall  
29 include the name, address, and department of motor vehicles registration  
30 number of the automobile broker business that provided the service of  
31 arranging, assisting, facilitating or effecting such agreement as agent,  
32 broker, or intermediary for such retail lessee, and the amount of the  
33 fee paid by the consumer to the automobile broker business, as such term  
34 is used in article thirty-five-B of the general business law, for the  
35 service of arranging, assisting, facilitating or effecting the lease of  
36 such new motor vehicle.

37 (m) In the case of a retail lease agreement for a new motor vehicle,  
38 as such term is defined in subdivision eleven of section four hundred  
39 sixty-two of the vehicle and traffic law, where the lessor or antic-  
40 ipated assignee is a manufacturer, as such term is defined in subdivi-  
41 sion nine of section four hundred sixty-two of the vehicle and traffic  
42 law, a person under contract with the manufacturer of such leased new  
43 motor vehicle to serve as holder, or a captive finance source, as such  
44 term is defined by subdivision sixteen of section four hundred sixty-two  
45 of the vehicle and traffic law, the name, address, and department of  
46 motor vehicles registration number of the automobile broker business  
47 that provided the service of arranging, assisting, facilitating or  
48 effecting such agreement as agent, broker, or intermediary for such  
49 retail lessee, and the amount of the fee paid by the consumer to the  
50 automobile broker business, as such term is used in article  
51 thirty-five-B of the general business law, for the service of arranging,  
52 assisting, facilitating or effecting the lease of such new motor vehi-  
53 cle.

54 § 15. Severability. If any provision of this act, or any application  
55 of any provision of this act, is held to be invalid, that shall not  
56 affect the validity or effectiveness of any other provision of this act,

1 or of any other application of any provision of this act, which can be  
2 given effect without that provision or application; and to that end, the  
3 provisions and applications of this act are severable.  
4 § 16. This act shall take effect immediately; provided that all auto-  
5 mobile brokers registered on the effective date of this act shall have  
6 ninety days to come into compliance with the provisions of this act.