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I N A S S E M B L Y

February 24, 2010

Introduced by M. of A. PHEFFER -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the vehicle and traffic law, in relation to requiring an automobile dealer to pay a specified amount on the prior credit or lease balance owing on the vehicle purchased or obtained in trade to the lessor, or to the legal owner of the vehicle purchased or obtained in trade within twenty-one calendar days of purchasing or obtaining the vehicle in trade

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

1 Section 1. Legislative findings. When consumers choose to purchase
2 vehicles from motor vehicle dealers that are licensed by the department
3 of motor vehicles, they have a reasonable expectation that the dealers
4 have sufficient resources to honor their contractual commitments.
5 Motor vehicle buyers have no reliable way to know in advance whether a
6 motor vehicle dealer is on the brink of insolvency or is on a sound
7 financial footing.
8 When licensed motor vehicle dealers go out of business they often fail
9 to pay off liens on vehicles purchased or obtained in trade, as agreed.
10 When this happens, the lien often reverts to the consumer who traded in
11 the vehicle. As the consumer has likely not budgeted for this extra car
12 payment, the result is often ruinous consequences, including harm to
13 their credit, repossessions that remain on their credit reports for
14 seven to ten years, job losses due to a lack of transportation, home
15 foreclosures, and bankruptcy. Such consequences are brought about
16 through no fault of the consumer.
17 Honest dealers are also adversely impacted when unscrupulous motor
18 vehicle dealers siphon off business and then harm the credit of their
19 customers by going out of business without paying liens, as promised,
20 shrinking the automotive market at precisely the time when it is sound
21 public policy to expand the market and accelerate sales of newer, safer,
22 cleaner motor vehicles.
23 S 2. The general business law is amended by adding a new section 198-c
24 to read as follows:

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

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1 S 198-C. AUTOMOBILE TRADE-IN PROTECTION. (A) AS USED IN THIS SECTION,
2 "DEALER" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED BY SECTION
3 FOUR HUNDRED FIFTEEN OF THE VEHICLE AND TRAFFIC LAW.

4 (B) WHEN A DEALER PURCHASES OR OBTAINS A VEHICLE IN TRADE IN A RETAIL
5 SALE OR LEASE TRANSACTION AND THE VEHICLE IS SUBJECT TO A PRIOR CREDIT
6 OR LEASE BALANCE, ALL OF THE FOLLOWING APPLY:

7 (1) IF THE DEALER AGREED TO PAY A SPECIFIED AMOUNT ON THE PRIOR CREDIT
8 OR LEASE BALANCE OWING ON THE VEHICLE PURCHASED OR OBTAINED IN TRADE,
9 AND THE AGREEMENT TO PAY THE SPECIFIED AMOUNT IS CONTAINED IN A WRITTEN
10 AGREEMENT DOCUMENTING THE TRANSACTION, THE DEALER SHALL TENDER THE
11 AGREED UPON AMOUNT AS PROVIDED IN THE WRITTEN AGREEMENT TO THE LESSOR,
12 OR TO THE LEGAL OWNER WHO POSSESSES ACCEPTABLE PROOF OF OWNERSHIP, OR TO
13 THE DESIGNEE OF THAT LESSOR OR LEGAL OWNER OF THE VEHICLE PURCHASED OR
14 OBTAINED IN TRADE WITHIN TWENTY-ONE CALENDAR DAYS OF PURCHASING OR
15 OBTAINING THE VEHICLE IN TRADE.

16 (2) IF THE DEALER DID NOT SET FORTH AN AGREEMENT REGARDING PAYMENT OF
17 A PRIOR CREDIT OR LEASE BALANCE OWED ON THE VEHICLE PURCHASED OR
18 OBTAINED IN TRADE, IN A WRITTEN AGREEMENT DOCUMENTING THE TRANSACTION,
19 THE DEALER SHALL TENDER TO THE LESSOR, OR TO THE LEGAL OWNER WHO
20 POSSESSES ACCEPTABLE PROOF OF OWNERSHIP, OR TO THE DESIGNEE OF THAT
21 LESSOR OR LEGAL OWNER OF THE VEHICLE PURCHASED OR OBTAINED IN TRADE, AN
22 AMOUNT NECESSARY TO DISCHARGE THE PRIOR CREDIT OR LEASE BALANCE OWING ON
23 THE VEHICLE PURCHASED OR OBTAINED IN TRADE WITHIN TWENTY-ONE CALENDAR
24 DAYS OF PURCHASING OR OBTAINING THE VEHICLE IN TRADE.

25 (3) THE TIME PERIOD SPECIFIED IN PARAGRAPH ONE OR TWO OF THIS SUBDIVI-
26 SION MAY BE SHORTENED IF THE DEALER AND CONSUMER AGREE, IN WRITING, TO A
27 SHORTER TIME PERIOD.

28 (4) A DEALER SHALL NOT SELL, CONSIGN FOR SALE, OR TRANSFER ANY OWNER-
29 SHIP INTEREST IN THE VEHICLE PURCHASED OR OBTAINED IN TRADE UNTIL AN
30 AMOUNT NECESSARY TO DISCHARGE THE PRIOR CREDIT OR LEASE BALANCE OWING ON
31 THE VEHICLE HAS BEEN TENDERED TO THE LESSOR, OR TO THE LEGAL OWNER WHO
32 POSSESSES ACCEPTABLE PROOF OF OWNERSHIP, OR TO THE DESIGNEE OF THAT
33 LESSOR OR LEGAL OWNER OF THE VEHICLE PURCHASED OR OBTAINED IN TRADE.

34 (C) A DEALER DOES NOT VIOLATE THIS SECTION IF THE DEALER REASONABLY
35 AND IN GOOD FAITH GIVES NOTICE OF RESCISSION OF THE CONTRACT PROMPTLY,
36 BUT NO LATER THAN TWENTY-ONE DAYS AFTER THE DATE ON WHICH THE VEHICLE
37 WAS PURCHASED OR OBTAINED IN TRADE, AND THE CONTRACT IS THEREAFTER
38 RESCINDED ON ANY GROUNDS AUTHORIZED BY LAW.

39 (D) (1) EVERY VIOLATION OF THIS SECTION SHALL BE DEEMED A DECEPTIVE
40 ACT AND PRACTICE SUBJECT TO ENFORCEMENT UNDER ARTICLE TWENTY-TWO-A OF
41 THIS CHAPTER. IN ADDITION, THE DISTRICT ATTORNEY, COUNTY ATTORNEY, AND
42 THE CORPORATION COUNSEL SHALL HAVE CONCURRENT AUTHORITY TO SEEK THE
43 RELIEF IN PARAGRAPH TWO OF THIS SUBDIVISION, AND ALL CIVIL PENALTIES
44 OBTAINED IN ANY SUCH ACTION SHALL BE RETAINED BY THE MUNICIPALITY OR
45 COUNTY.

46 (2) IN EVERY CASE WHERE THE COURT SHALL DETERMINE THAT A VIOLATION OF
47 THIS SECTION HAS OCCURRED, IT MAY IMPOSE A CIVIL PENALTY OF NOT LESS
48 THAN ONE THOUSAND DOLLARS NOR MORE THAN TWO THOUSAND DOLLARS FOR EACH
49 VIOLATION. SUCH PENALTY SHALL BE IN ADDITION TO THE DENIAL OF REGISTRA-
50 TION OR RENEWAL, SUSPENSION OF REGISTRATION OR REVOCATION OF REGISTRA-
51 TION OR ASSESSMENT OF A FINE AUTHORIZED BY SUBDIVISION NINE OF SECTION
52 FOUR HUNDRED FIFTEEN OF THE VEHICLE AND TRAFFIC LAW.

53 (3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT ANY RIGHT
54 WHICH ANY PERSON MAY HAVE UNDER ANY OTHER STATUTE OR THE COMMON LAW.

1 (E) ANY PERSON WHO IS CONVICTED OF KNOWINGLY VIOLATING PARAGRAPH FOUR
2 OF SUBDIVISION (B) OF THIS SECTION SHALL BE GUILTY OF A CLASS A MISDE-
3 MEANOR.

4 (F) IF ANY PART OR PROVISION OF THIS SECTION OR THE APPLICATION THERE-
5 OF TO ANY PERSON OR CIRCUMSTANCES BE ADJUDGED INVALID BY ANY COURT OF
6 COMPETENT JURISDICTION, SUCH JUDGMENT SHALL BE CONFINED IN ITS OPER-
7 ATIONS TO THE PART, PROVISION OR APPLICATION DIRECTLY INVOLVED IN THE
8 CONTROVERSY IN WHICH SUCH JUDGMENT SHALL HAVE BEEN RENDERED AND SHALL
9 NOT AFFECT OR IMPAIR THE VALIDITY OF THE REMAINDER OF THIS SECTION OR
10 THE APPLICATION THEREOF TO OTHER PERSONS OR CIRCUMSTANCES.

11 S 3. Subdivision 9 of section 415 of the vehicle and traffic law, as
12 amended by chapter 7 of the laws of 2000, is amended to read as follows:

13 9. Suspension, revocation and refusal to issue or to renew a registra-
14 tion. The commissioner or any person deputized by him may deny the
15 application of any person for registration under this section and
16 suspend or revoke a registration under this section or refuse to issue a
17 renewal thereof if he or such deputy determines that such applicant or
18 registrant or any officer, director, stockholder, or partner, or any
19 other person directly or indirectly interested in the business:

20 a. Has made a material false statement in his application; or
21 b. Has used or permitted the use of number plates contrary to law; or
22 c. Has been guilty of fraud or fraudulent practices, or has practiced
23 dishonest or misleading advertising; or

24 d. Has failed to comply with any of the rules and regulations of the
25 commissioner for the enforcement of this article or with any provision
26 of this chapter applicable thereto; or

27 e. Has wilfully violated any provisions of the motor vehicle retail
28 instalment sales act [or], the motor vehicle retail leasing act OR
29 SECTION ONE HUNDRED NINETY-EIGHT-C OF THE GENERAL BUSINESS LAW; or

30 f. Does not have a place of business within the meaning of this
31 section; or

32 g. Has been convicted of any crime involving dishonesty or deceit; or

33 h. Was the former holder, or was an officer, director, stockholder, or
34 partner, in a corporation or partnership which was the former holder of
35 a dealer's registration, which was suspended or revoked by the commis-
36 sioner.

37 S 4. This act shall take effect on the ninetieth day after it shall
38 have become a law.