S T A T E O F N E W Y O R K

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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 -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Legislative findings. When consumers choose to purchase vehicles from motor vehicle dealers that are licensed by the department of motor vehicles, they have a reasonable expectation that the dealers have sufficient resources to honor their contractual commitments.

Motor vehicle buyers have no reliable way to know in advance whether a motor vehicle dealer is on the brink of insolvency or is on a sound financial footing.

When licensed motor vehicle dealers go out of business they occasionally fail to pay off liens on vehicles purchased or obtained in trade, as agreed. When this happens, the obligation often reverts to the consumer who traded in the vehicle. As the consumer has likely not budgeted for this extra car payment, the result can be ruinous, including harm to their credit, repossessions that remain on their credit reports for seven to ten years, home foreclosures, and bankruptcy. Such consequences are brought about through no fault of the consumer.

Honest dealers are also adversely impacted when unscrupulous motor vehicle dealers siphon off business and then harm the credit of their customers by going out of business without paying liens, as promised, shrinking the automotive market at precisely the time when it is sound public policy to expand the market and accelerate sales of newer, safer, cleaner motor vehicles.

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

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S 2. The general business law is amended by adding a new section 198-c to read as follows:

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

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

(1) IF THE DEALER AGREED TO PAY A SPECIFIED AMOUNT ON THE PRIOR CREDIT OR LEASE BALANCE OWING ON THE VEHICLE PURCHASED OR OBTAINED IN TRADE, AND THE AGREEMENT TO PAY THE SPECIFIED AMOUNT IS CONTAINED IN A WRITTEN AGREEMENT DOCUMENTING THE TRANSACTION, THE DEALER SHALL TENDER THE AGREED UPON AMOUNT AS PROVIDED IN THE WRITTEN AGREEMENT TO THE LESSOR, OR TO THE LIEN HOLDER, OR TO THE DESIGNEE OF THAT LESSOR OR LIEN HOLDER OF THE VEHICLE PURCHASED OR OBTAINED IN TRADE WITHIN TWENTY-ONE CALENDAR DAYS OF PURCHASING OR OBTAINING THE VEHICLE IN TRADE, PROVIDED, HOWEVER, THAT THE DEALER MAY RELY UPON THE AMOUNT DUE AS STATED BY THE LESSOR OR LIEN HOLDER.

(2) IF THE DEALER DID NOT SET FORTH AN AGREEMENT REGARDING PAYMENT OF A PRIOR CREDIT OR LEASE BALANCE OWED ON THE VEHICLE PURCHASED OR OBTAINED IN TRADE, IN A WRITTEN AGREEMENT DOCUMENTING THE TRANSACTION, THE DEALER SHALL TENDER TO THE LESSOR, OR TO THE LIEN HOLDER, OR TO THE DESIGNEE OF THAT LESSOR OR LIEN HOLDER OF THE VEHICLE PURCHASED OR OBTAINED IN TRADE, AN AMOUNT NECESSARY TO DISCHARGE THE PRIOR CREDIT OR LEASE BALANCE OWING ON THE VEHICLE PURCHASED OR OBTAINED IN TRADE WITHIN TWENTY-ONE CALENDAR DAYS OF PURCHASING OR OBTAINING THE VEHICLE IN TRADE, PROVIDED, HOWEVER, THAT THE DEALER MAY RELY UPON THE AMOUNT DUE AS STATED BY THE LESSOR OR LIEN HOLDER.

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

(4) A DEALER SHALL NOT SELL, CONSIGN FOR SALE, OR TRANSFER ANY OWNERSHIP INTEREST IN THE VEHICLE PURCHASED OR OBTAINED IN TRADE UNTIL AN AMOUNT NECESSARY TO DISCHARGE THE PRIOR CREDIT OR LEASE BALANCE OWING ON THE VEHICLE HAS BEEN TENDERED TO THE LESSOR, OR TO THE LIEN HOLDER, OR TO THE DESIGNEE OF THAT LESSOR OR LIEN HOLDER OF THE VEHICLE PURCHASED OR OBTAINED IN TRADE.

(C) IF THE AGREEMENT GIVES EITHER PARTY THE RIGHT TO RESCIND THE ENTIRE AGREEMENT WITHIN A REASONABLE TIME PERIOD, RESCISSION OF THE ENTIRE AGREEMENT SHALL EFFECTIVELY RESCIND THE OBLIGATIONS PURSUANT TO THIS SECTION WITHOUT VIOLATING THIS SECTION.

(D) THIS SECTION SHALL NOT APPLY TO AGREEMENTS OR TRANSACTIONS THAT INVOLVE A STATE OR FEDERAL PROGRAM IN WHICH A DEALER IS ISSUED A VOUCHER TO OFFSET THE PURCHASE PRICE OR LEASE PRICE FOR A QUALIFYING LEASE OF A NEW VEHICLE UPON THE SURRENDER OF AN ELIGIBLE TRADE-IN VEHICLE TO A DEALER PARTICIPATING IN THE PROGRAM.

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

(2) IN EVERY CASE WHERE THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, IT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS FOR EACH VIOLATION. SUCH PENALTY SHALL BE IN

ADDITION TO ANY DENIAL OF REGISTRATION OR RENEWAL, SUSPENSION OF REGISTRATION OR REVOCATION OF REGISTRATION OR ASSESSMENT OF A FINE AUTHORIZED BY SUBDIVISION NINE OF SECTION FOUR HUNDRED FIFTEEN OF THE VEHICLE AND TRAFFIC LAW.

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

(4) NO DEALER SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SECTION IF SUCH DEALER SHOWS, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID SUCH ERROR.

(F) ANY PERSON WHO IS CONVICTED OF KNOWINGLY VIOLATING PARAGRAPH FOUR OF SUBDIVISION (B) OF THIS SECTION SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

(G) IF ANY PART OR PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES BE ADJUDGED INVALID BY ANY COURT OF COMPETENT JURISDICTION, SUCH JUDGMENT SHALL BE CONFINED IN ITS OPERATIONS TO THE PART, PROVISION OR APPLICATION DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDGMENT SHALL HAVE BEEN RENDERED AND SHALL NOT AFFECT OR IMPAIR THE VALIDITY OF THE REMAINDER OF THIS SECTION OR THE APPLICATION THEREOF TO OTHER PERSONS OR CIRCUMSTANCES.

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

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

a. Has made a material false statement in his application; or

b. Has used or permitted the use of number plates contrary to law; or

c. Has been guilty of fraud or fraudulent practices, or has practiced dishonest or misleading advertising; or

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

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

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

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

h. Was the former holder, or was an officer, director, stockholder, or partner, in a corporation or partnership which was the former holder of a dealer's registration, which was suspended or revoked by the commissioner.

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