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

3224

2009-2010 Regular Sessions

I N A S S E M B L Y

January 23, 2009

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

AN ACT to amend the vehicle and traffic law, in relation to dealers and dealer registration; and to amend the general business law, in relation to the definition of dealer

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

Section 1. Paragraph a of subdivision 1, paragraph b and the opening paragraph of paragraph d of subdivision 5 and paragraphs c and h of subdivision 9 of section 415 of the vehicle and traffic law, as amended by chapter 7 of the laws of 2000, are amended to read as follows:

a. "Dealer" means a person engaged in the business of buying, selling or dealing in motor vehicles, motorcycles or trailers, other than mobile homes or manufactured homes, at retail or wholesale; except, however, trailers with an unladen weight of less than one thousand pounds. For the purposes of this section, a "mobile home" or "manufactured home" means a mobile home or manufactured home as defined in section one hundred twenty-two-c of this chapter. Any person who sells, or offers for sale more than five motor vehicles, motorcycles or trailers in any calendar year or who displays or permits the display of three or more motor vehicles, motorcycles or trailers for sale at any one time or within any one calendar month upon premises owned or controlled by him, if such vehicles were purchased, acquired or otherwise obtained by such person for the purpose of resale, will be regarded as a dealer. ANY PERSON WHO WITH THE AID OF THE INTERNET, OR OTHER COMPUTER-MEDIATED CHANNEL, DIRECTLY OR INDIRECTLY, SELLS OR DELIVERS MORE THAN FIVE MOTOR VEHICLES TO CONSUMERS IN THIS STATE WITHIN ONE YEAR SHALL BE DEEMED A DEALER. Except as otherwise provided in subdivisions three, five, six-b, and seven of this section, the term "dealer" shall include a "new motor vehicle dealer" as defined by paragraph f of this subdivision and a "qualified dealer" as defined in paragraph g of this subdivision.

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

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b. The place or places, including the complete address or addresses where the business is to be conducted and, in the case of an application to do business as a new motor vehicle dealer, the names of each line or make of new motor vehicle which a manufacturer or distributor has authorized the applicant to sell from each location and the date of inception of the franchise, as defined in section four hundred sixty-two of this title, which authorizes the applicant to sell such line or make from each location. A copy of each such franchise, or other documentation in lieu thereof satisfactory to the commissioner, shall be submitted to the commissioner at the time of application and upon each renewal of each certificate to do business as a new motor vehicle dealer. AN APPLICANT WHO PROPOSES TO USE THE INTERNET, OR OTHER COMPUTER-MEDIATED CHANNEL, IN AID OF ITS SALE OF MOTOR VEHICLES TO CONSUMERS IN THIS STATE, WHICH SUCH ACTIVITIES MAY RESULT IN THE CREATION OF BUSINESS RECORDS OUTSIDE THIS STATE, SHALL PROVIDE THE COMMISSIONER WITH THE IDENTITY OF THE PERSON, AND HIS OR HER ADDRESS AND TELEPHONE NUMBER, WHO HAS CONTROL OVER SUCH RECORDS, BUT THIS SHALL NOT RELIEVE SUCH APPLICANT FROM MAINTAINING AN ESTABLISHED PLACE OF BUSINESS IN THIS STATE.

Before an application for an original certificate of registration is approved, the applicant must have on the premises to be licensed adequate space and proper facilities to retain and safeguard all records and documents he must maintain upon the licensed premises as required by [the vehicle and traffic law] THIS CHAPTER and the regulations of the commissioner. AN APPLICANT WHO USES THE INTERNET, OR OTHER COMPUTER-MEDIATED CHANNEL, IN AID OF ITS SALE OF MOTOR VEHICLES TO CONSUMERS IN THIS STATE, WHICH SUCH ACTIVITIES MAY RESULT IN THE CREATION OF BUSINESS RECORDS OUTSIDE THIS STATE SHALL UPON WRITTEN REQUEST OF THE COMMISSIONER OR ANY OF ITS INSPECTORS OR OTHER EMPLOYEES PROVIDE COPIES OF RECORDS MAINTAINED ON SUCH COMPUTERS REGARDING TRANSACTIONS WITH CONSUMERS IN THIS STATE WITHIN FIFTEEN DAYS OF RECEIPT OF SUCH REQUEST. IN THE INSTANCE OF A CONSUMER REQUESTING THEIR INDIVIDUAL RECORDS THE APPLICANT WHO USES THE INTERNET MUST PROVIDE SUCH RECORDS WITHIN FIVE BUSINESS DAYS OF RECEIPT OF SUCH REQUEST.

c. Has been guilty of fraud or fraudulent practices, or has practiced dishonest or misleading advertising. DEALER ADVERTISEMENTS OF PRODUCTS OR SERVICES THAT ARE SUBJECT TO AVAILABILITY MUST BE PLAINLY AND LEGIBLY IDENTIFIED AS SUCH BY THE DEALER IN THE ADVERTISEMENT. "ADVERTISING" AND "ADVERTISEMENT" MEANS, FOR PURPOSES OF THIS PARAGRAPH, ANY ORAL, WRITTEN, PICTORIAL, OR GRAPHIC EXPRESSION OF A MESSAGE MADE BY A DEALER TO THE CONSUMING PUBLIC IN CONNECTION WITH THE SOLICITATION OF ITS BUSINESS OR SERVICES, AND INCLUDES, WITHOUT LIMITATION, SUCH EXPRESSIONS CONTAINED IN NEWSPAPERS, MAGAZINES, DIRECT MAIL, INTERNET WEBSITES, OR ON RADIO OR TELEVISION; 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[.]; OR

S 2. Subdivision 9 of section 415 of the vehicle and traffic law is amended by adding two new paragraphs i and j to read as follows:

I. AS TO VEHICLES DELIVERED TO A LOCATION DESIGNATED BY THE CONSUMER, HAS FAILED TO ORIGINATE SUCH VEHICLE DELIVERIES FROM A DEALER'S ESTABLISHED PLACE OF BUSINESS IN THIS STATE; OR

J. HAS FAILED TO COMPLY WITH ANY OF THE REQUIREMENTS SET FORTH UNDER SECTION ONE HUNDRED NINETY-EIGHT-A OR ONE HUNDRED NINETY-EIGHT-B OF THE GENERAL BUSINESS LAW.

S 3. The opening paragraph of paragraph 3 of subdivision a of section 198-b of the general business law, as amended by chapter 444 of the laws of 1989, is amended to read as follows:

"Dealer" means any person or business which sells, offers for sale, leases or offers for lease a used vehicle after selling, offering for sale, leasing or offering for lease three or more used vehicles in the previous twelve month period[, but]. ANY PERSON WHO WITH THE AID OF THE INTERNET, OR OTHER COMPUTER-MEDIATED CHANNEL, DIRECTLY OR INDIRECTLY, SELLS, OR DELIVERS OR LEASES MORE THAN FIVE MOTOR VEHICLES TO CONSUMERS WITHIN ONE YEAR IN THIS STATE SHALL BE DEEMED A MOTOR VEHICLE DEALER. DEALER does not include:

S 4. Nothing in this act shall contravene any franchise agreements in effect as of the effective date of this act.

S 5. This act shall take effect on the ninetieth day after it shall have become a law.