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

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2011-2012 Regular Sessions

I N A S S E M B L Y

January 26, 2011

Introduced by M. of A. P. RIVERA, MILLMAN, J. RIVERA, COLTON -- Multi-Sponsored by -- M. of A. ARROYO, BOYLAND, CAHILL, CLARK, GOTTFRIED, HEASTIE, HIKIND, HOOPER, JACOBS, V. LOPEZ, MAYERSOHN, McDONOUGH, ORTIZ, RAMOS, N. RIVERA, ROBINSON, TITUS, TOWNS, WEINSTEIN, WEISENBERG, WRIGHT -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the personal property law, in relation to requiring certain contracts to be written in the language in which such contracts were negotiated

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

Section 1. Section 396-p of the general business law, as added by chapter 736 of the laws of 1978, is amended by adding a new subdivision 2-a to read as follows:

2-A. ANY RETAIL DEALER WHO NEGOTIATES PRIMARILY IN A LANGUAGE OTHER THAN ENGLISH, ORALLY OR IN WRITING, IN THE COURSE OF ENTERING INTO A CONTRACT PROVIDED FOR IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION, SHALL DELIVER TO THE CONSUMER WHO IS THE OTHER PARTY TO SUCH CONTRACT AND PRIOR TO THE EXECUTION OF SUCH CONTRACT, AN UNSIGNED TRANSLATION OF SUCH CONTRACT, IN THE LANGUAGE IN WHICH SUCH CONTRACT WAS NEGOTIATED.

(A) IN ADDITION TO THE PENALTIES IMPOSED UNDER SUBDIVISION SIX OF THIS SECTION, FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION SHALL ENTITLE THE AGGRIEVED CONSUMER TO CANCEL SUCH CONTRACT. UPON A FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION, THE AGGRIEVED CONSUMER MAY CANCEL THE CONTRACT. FOR PURPOSES OF THIS SUBDIVISION, CANCELLATION SHALL BE DEEMED TO HAVE OCCURRED WHEN WRITTEN NOTICE OF CANCELLATION IS GIVEN TO THE RETAIL DEALER. NOTICE OF CANCELLATION, IF MAILED, SHALL BE DEEMED DELIVERED ON THE DATE OF THE POSTMARK. NOTICE OF CANCELLATION SHALL BE SUFFICIENT IF SUCH NOTICE INDICATES THE INTENTION OF THE CONSUMER NOT TO BE BOUND BY SUCH CONTRACT. IF A CONSUMER CANCELS A

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

CONTRACT PURSUANT TO THIS PARAGRAPH, THE RETAIL DEALER SHALL NOT IMPOSE ANY PENALTY OR OBLIGATION UPON SUCH CONSUMER. WHEN A CONTRACT, WHICH HAS BEEN SOLD AND ASSIGNED TO A FINANCIAL INSTITUTION IS CANCELED PURSUANT TO THIS SUBDIVISION, SUCH CONSUMER SHALL MAKE RESTITUTION TO AND HAVE RESTITUTION MADE BY THE RETAIL DEALER WITH WHOM HE OR SHE MADE THE CONTRACT, AND SHALL GIVE NOTICE OF CANCELLATION TO THE ASSIGNEE. NOTWITHSTANDING THAT THE CONTRACT WAS ASSIGNED WITHOUT RECOURSE, THE ASSIGNMENT SHALL BE DEEMED CANCELED AND THE ASSIGNOR SHALL PROMPTLY REPURCHASE THE CONTRACT FROM THE ASSIGNEE.

(B) THE TERMS OF THE CONTRACT WHICH IS EXECUTED IN THE ENGLISH LANGUAGE SHALL DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. HOWEVER, THE TRANSLATION OF THE CONTRACT IN ANY LANGUAGE OTHER THAN ENGLISH IN WHICH THE CONTRACT WAS NEGOTIATED SHALL BE ADMISSIBLE IN EVIDENCE ONLY TO SHOW THAT NO CONTRACT WAS ENTERED INTO BECAUSE OF A SUBSTANTIAL DIFFERENCE IN THE MATERIAL TERMS AND CONDITIONS OF THE CONTRACT AND THE TRANSLATION.

(C) THE PROVISIONS OF THIS SUBDIVISION SHALL BE IN ADDITION TO ANY OTHER RIGHTS TO REVOKE AN OFFER.

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

S 198-D. CONTRACTS IN CERTAIN LANGUAGES FOR THE SALE OR LEASE OF USED MOTOR VEHICLES. ANY RETAIL DEALER WHO NEGOTIATES PRIMARILY IN A LANGUAGE OTHER THAN ENGLISH, ORALLY OR IN WRITING, IN THE COURSE OF ENTERING INTO A CONTRACT FOR THE SALE OR LEASE OF A USED MOTOR VEHICLE WITH A CONSUMER, SHALL DELIVER TO SUCH CONSUMER WHO IS THE OTHER PARTY TO SUCH CONTRACT AND PRIOR TO THE EXECUTION OF SUCH CONTRACT, AN UNSIGNED TRANSLATION OF SUCH CONTRACT, IN THE LANGUAGE IN WHICH SUCH CONTRACT WAS NEGOTIATED.

A. IN ADDITION TO THE PENALTIES IMPOSED UNDER SUBDIVISION D OF THIS SECTION, FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION SHALL ENTITLE THE AGGRIEVED CONSUMER TO CANCEL SUCH CONTRACT. UPON A FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION, THE AGGRIEVED CONSUMER MAY CANCEL THE CONTRACT. FOR PURPOSES OF THIS SECTION, CANCELLATION SHALL BE DEEMED TO HAVE OCCURRED WHEN WRITTEN NOTICE OF CANCELLATION IS GIVEN TO THE RETAIL DEALER. NOTICE OF CANCELLATION, IF MAILED, SHALL BE DEEMED DELIVERED ON THE DATE OF THE POSTMARK. NOTICE OF CANCELLATION SHALL BE SUFFICIENT IF SUCH NOTICE INDICATES THE INTENTION OF THE CONSUMER NOT TO BE BOUND BY SUCH CONTRACT. IF A CONSUMER CANCELS A CONTRACT PURSUANT TO THIS SUBDIVISION, THE RETAIL DEALER SHALL NOT IMPOSE ANY PENALTY OR OBLIGATION UPON SUCH CONSUMER. WHEN A CONTRACT, WHICH HAS BEEN SOLD AND ASSIGNED TO A FINANCIAL INSTITUTION IS CANCELED PURSUANT TO THIS SUBDIVISION, SUCH CONSUMER SHALL MAKE RESTITUTION TO AND HAVE RESTITUTION MADE BY THE RETAIL DEALER WITH WHOM HE OR SHE MADE THE CONTRACT, AND SHALL GIVE NOTICE OF CANCELLATION TO THE ASSIGNEE. NOTWITHSTANDING THAT THE CONTRACT WAS ASSIGNED WITHOUT RECOURSE, THE ASSIGNMENT SHALL BE DEEMED CANCELED AND THE ASSIGNOR SHALL PROMPTLY REPURCHASE THE CONTRACT FROM THE ASSIGNEE.

B. THE TERMS OF THE CONTRACT WHICH IS EXECUTED IN THE ENGLISH LANGUAGE SHALL DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. HOWEVER, THE TRANSLATION OF THE CONTRACT IN ANY LANGUAGE OTHER THAN ENGLISH IN WHICH THE CONTRACT WAS NEGOTIATED SHALL BE ADMISSIBLE IN EVIDENCE ONLY TO SHOW THAT NO CONTRACT WAS ENTERED INTO BECAUSE OF A SUBSTANTIAL DIFFERENCE IN THE MATERIAL TERMS AND CONDITIONS OF THE CONTRACT AND THE TRANSLATION.

C. THE PROVISIONS OF THIS SECTION SHALL BE IN ADDITION TO ANY OTHER RIGHTS TO REVOKE AN OFFER.

D. ANY RETAIL DEALER OR EMPLOYEE OF A DEALER WHO VIOLATES ANY OF THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIFTY DOLLARS FOR THE FIRST OFFENSE AND TWO HUNDRED FIFTY DOLLARS FOR THE SECOND AND EACH SUBSEQUENT OFFENSE.

S 3. Section 337 of the personal property law is amended by adding a new subdivision 5-a to read as follows:

5-A. ANY RETAIL DEALER WHO NEGOTIATES PRIMARILY IN A LANGUAGE OTHER THAN ENGLISH, ORALLY OR IN WRITING, IN THE COURSE OF ENTERING INTO A RETAIL LEASE AGREEMENT PROVIDED FOR IN THIS SECTION, SHALL DELIVER TO THE CONSUMER WHO IS THE OTHER PARTY TO SUCH AGREEMENT AND PRIOR TO THE EXECUTION OF SUCH AGREEMENT, AN UNSIGNED TRANSLATION OF SUCH AGREEMENT, IN THE LANGUAGE IN WHICH SUCH AGREEMENT WAS NEGOTIATED.

(A) IN ADDITION TO THE PENALTIES IMPOSED UNDER SECTION THREE HUNDRED FORTY-SIX OF THIS ARTICLE, FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION SHALL ENTITLE THE AGGRIEVED CONSUMER TO CANCEL SUCH AGREEMENT. UPON A FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION, THE AGGRIEVED CONSUMER MAY CANCEL THE AGREEMENT. FOR PURPOSES OF THIS SUBDIVISION, CANCELLATION SHALL BE DEEMED TO HAVE OCCURRED WHEN WRITTEN NOTICE OF CANCELLATION IS GIVEN TO THE RETAIL DEALER. NOTICE OF CANCELLATION, IF MAILED, SHALL BE DEEMED DELIVERED ON THE DATE OF THE POSTMARK. NOTICE OF CANCELLATION SHALL BE SUFFICIENT IF SUCH NOTICE INDICATES THE INTENTION OF THE CONSUMER NOT TO BE BOUND BY SUCH AGREEMENT. IF A CONSUMER CANCELS AN AGREEMENT PURSUANT TO THIS PARAGRAPH, THE RETAIL DEALER SHALL NOT IMPOSE ANY PENALTY OR OBLIGATION UPON SUCH CONSUMER. WHEN AN AGREEMENT, WHICH HAS BEEN SOLD AND ASSIGNED TO A FINANCIAL INSTITUTION IS CANCELED PURSUANT TO THIS SUBDIVISION, SUCH CONSUMER SHALL MAKE RESTITUTION TO AND HAVE RESTITUTION MADE BY THE RETAIL DEALER WITH WHOM HE OR SHE MADE THE AGREEMENT, AND SHALL GIVE NOTICE OF CANCELLATION TO THE ASSIGNEE. NOTWITHSTANDING THAT THE AGREEMENT WAS ASSIGNED WITHOUT RECOURSE, THE ASSIGNMENT SHALL BE DEEMED CANCELED AND THE ASSIGNOR SHALL PROMPTLY REPURCHASE THE AGREEMENT FROM THE ASSIGNEE.

(B) THE TERMS OF THE AGREEMENT WHICH IS EXECUTED IN THE ENGLISH LANGUAGE SHALL DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES. HOWEVER, THE TRANSLATION OF THE AGREEMENT IN ANY LANGUAGE OTHER THAN ENGLISH IN WHICH THE AGREEMENT WAS NEGOTIATED SHALL BE ADMISSIBLE IN EVIDENCE ONLY TO SHOW THAT NO CONTRACT WAS ENTERED INTO BECAUSE OF A SUBSTANTIAL DIFFERENCE IN THE MATERIAL TERMS AND CONDITIONS OF THE AGREEMENT AND THE TRANSLATION.

(C) THE PROVISIONS OF THIS SUBDIVISION SHALL BE IN ADDITION TO ANY OTHER RIGHTS TO REVOKE AN OFFER.

S 4. This act shall take effect on the one hundred twentieth day after it shall have become a law and shall apply to contracts entered into on or after such effective date.