

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

S. 2913--C
Cal. No. 132

A. 4298--C

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

February 3, 2011

IN SENATE -- Introduced by Sens. MAZIARZ, PERKINS -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

IN ASSEMBLY -- Introduced by M. of A. PERRY, REILICH, ROBINSON, WEISENBERG -- Multi-Sponsored by -- M. of A. ABINANTI, GIBSON, HIKIND, McDONOUGH, ORTIZ, P. RIVERA, TITUS -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law and the general business law, in relation to mobility dealers

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

1 Section 1. Paragraphs a, f and i of subdivision 1 of section 415 of
2 the vehicle and traffic law, as amended by chapter 7 of the laws of
3 2000, are amended and three new paragraphs k, l and m are added to read
4 as follows:

5 a. "Dealer" means a person engaged in the business of buying, selling
6 or dealing in motor vehicles, motorcycles or trailers, other than mobile
7 homes or manufactured homes, at retail or wholesale; except, however,
8 trailers with an unladen weight of less than one thousand pounds. For
9 the purposes of this section, a "mobile home" or "manufactured home"

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

LBD04356-06-1

1 means a mobile home or manufactured home as defined in section one
2 hundred twenty-two-c of this chapter. Any person who sells, or offers
3 for sale more than five motor vehicles, motorcycles or trailers in any
4 calendar year or who displays or permits the display of three or more
5 motor vehicles, motorcycles or trailers for sale at any one time or
6 within any one calendar month upon premises owned or controlled by him
7 OR HER, if such vehicles were purchased, acquired or otherwise obtained
8 by such person for the purpose of resale, will be regarded as a dealer.
9 Except as otherwise provided in subdivisions three, five, six-b, and
10 seven of this section, the term "dealer" shall include a "new motor
11 vehicle dealer" as defined by paragraph f of this subdivision and a
12 "qualified dealer" as defined in paragraph g of this subdivision.

13 f. "New motor vehicle dealer" means a dealer who engages in the activ-
14 ities described in paragraph a of this subdivision if such activities
15 relate to new motor vehicles and if such dealer is party to a franchise,
16 as the terms "new motor vehicle" and "franchise" are defined in section
17 four hundred sixty-two of this title; provided, however, for purposes of
18 this definition, a new motor vehicle shall include only those motor
19 vehicles commonly classified as a passenger automobile, sport utility
20 vehicle, light truck, pickup truck, van, minivan, or suburban, with a
21 gross vehicle weight rating of ten thousand pounds or less, and shall
22 not include (i) any such vehicle which has been converted for use as a
23 tow truck[,] or (ii) a motor vehicle for which the current ownership
24 document is a statement of acquisition issued pursuant to section four
25 hundred twenty-nine of this title, a salvage certificate, salvage
26 certificate of title, nonrepairable certificate, or similar document
27 issued by any state or jurisdiction; or (iii) any motor vehicle commonly
28 classified as a bus, school bus, garbage truck, marine trailer, tow
29 truck, motorcycle, recreational vehicle, snowmobile, trailer, mobile
30 home or construction equipment; and provided further that a dealer is a
31 new motor vehicle dealer only with respect to those vehicles which are
32 of the same make as those which that dealer is authorized to sell at
33 that location pursuant to a valid franchise agreement.

34 i. "Used motor vehicle" means any vehicle not included in the defi-
35 nition of a new motor vehicle. Provided, however, that such term as used
36 in paragraph g of this subdivision shall include only those motor vehi-
37 cles commonly classified as a passenger automobile, sport utility vehi-
38 cle, light truck, pick up truck, van, minivan or suburban, with a gross
39 vehicle weight rating of ten thousand pounds or less, which (i) is not
40 deemed to be a "new motor vehicle" pursuant to paragraph h of this
41 subdivision, or (ii) has not been converted for use as a tow truck[,] or
42 (iii) is not commonly classified as a bus, school bus, garbage truck,
43 marine trailer, tow truck, motorcycle, recreational vehicle, snowmobile,
44 trailer, mobile home, or construction equipment.

45 K. (I) "MOBILITY DEALER" MEANS A PERSON WHO DISPLAYS FOR SALE OR
46 ADVERTISES FOR SALE MORE THAN FIVE MOBILITY VEHICLES IN ANY CALENDAR
47 YEAR OR WHO DISPLAYS OR PERMITS THE DISPLAY OF THREE OR MORE MOBILITY
48 VEHICLES AT ANY ONE TIME OR WITHIN ANY ONE CALENDAR MONTH UPON PREMISES
49 OWNED OR CONTROLLED BY HIM OR HER, REGARDLESS OF THE OWNERSHIP OF SUCH
50 MOBILITY VEHICLES.

51 (II) MOBILITY DEALER DOES NOT INCLUDE ANY OF THE FOLLOWING:

52 (A) RECEIVERS, TRUSTEES, ADMINISTRATORS, EXECUTORS, GUARDIANS OR OTHER
53 PERSONS APPOINTED BY OR ACTING UNDER THE JUDGMENT OR ORDER OF ANY COURT;

54 (B) PUBLIC OFFICERS WHILE PERFORMING THEIR OFFICIAL DUTIES;

55 (C) PERSONS DISPOSING OF MOTOR VEHICLES ACQUIRED FOR THEIR OWN USE OR
56 FOR THE USE OF A FAMILY MEMBER, AND ACTUALLY SO USED, WHEN THE VEHICLES

1 HAVE BEEN ACQUIRED AND USED IN GOOD FAITH AND NOT FOR THE PURPOSES OF
2 AVOIDING THE PROVISIONS OF THIS SECTION;

3 (D) FINANCIAL INSTITUTIONS WHO SELL REPOSSESSED MOBILITY VEHICLES;

4 (E) INSURANCE COMPANIES WHO RESELL MOBILITY VEHICLES THAT THEY
5 ACQUIRED IN THE COURSE OF BUSINESS.

6 L. "MOBILITY EQUIPMENT" MEANS MECHANICAL OR ELECTRONIC DEVICES, PARTS
7 OR ACCESSORIES SPECIFICALLY DESIGNED TO FACILITATE THE USE OF A MOTOR
8 VEHICLE BY AN AGING OR DISABLED PERSON AS INTERPRETED BY THE NATIONAL
9 HIGHWAY TRAFFIC SAFETY ADMINISTRATION AND WHICH ARE PERMANENTLY ATTACHED
10 TO OR INCORPORATED IN THE VEHICLE.

11 M. "MOBILITY VEHICLE" MEANS A MOTOR VEHICLE THAT IS SPECIALLY DESIGNED
12 AND EQUIPPED TO TRANSPORT A PERSON WITH A DISABILITY (AS INTERPRETED BY
13 THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION) AND THAT:

14 (I) IS DESIGNED AND BUILT OR MODIFIED TO ALLOW VEHICLE INGRESS AND
15 EGRESS FOR A PERSON IN A WHEELCHAIR OR SCOOTER; AND

16 (II) CONTAINS AT LEAST ONE OF THE FOLLOWING:

17 (A) AN ELECTRONIC OR MECHANICAL WHEELCHAIR, SCOOTER, OR PLATFORM LIFT
18 THAT ENABLES A PERSON TO ENTER OR EXIT THE VEHICLE WHILE OCCUPYING A
19 WHEELCHAIR OR SCOOTER;

20 (B) AN ELECTRONIC OR MECHANICAL WHEELCHAIR RAMP; OR

21 (C) A SYSTEM TO SECURE A WHEELCHAIR OR SCOOTER TO ALLOW FOR A PERSON
22 TO BE SAFELY TRANSPORTED WHILE OCCUPYING THE WHEELCHAIR OR SCOOTER, THAT
23 IS INSTALLED AS AN INTEGRAL PART OR PERMANENT ATTACHMENT TO THE MOTOR
24 VEHICLE'S CHASSIS.

25 S 2. The opening paragraph and paragraph c of subdivision 3 of section
26 415 of the vehicle and traffic law, as amended by chapter 7 of the laws
27 of 2000, are amended and a new paragraph b-1 is added to read as
28 follows:

29 Registration of new motor vehicle dealers, MOBILITY DEALERS, qualified
30 dealers, and other motor vehicle dealers.

31 B-1. NO PERSON SHALL ENGAGE IN BUSINESS AS A MOBILITY DEALER, OR
32 REPRESENT, ADVERTISE, OR OTHERWISE HOLD HIMSELF OR HERSELF OUT AS
33 ENGAGED OR INTENDING TO ENGAGE IN THE BUSINESS OF DISPLAYING, ADVERTIS-
34 ING OR INVENTORYING NEW MOBILITY VEHICLES IN THIS STATE, UNLESS THERE
35 SHALL HAVE BEEN ISSUED TO HIM OR HER A CERTIFICATE OF REGISTRATION AS A
36 MOBILITY DEALER AS PROVIDED IN THIS SUBDIVISION AND SUBDIVISION SEVEN OF
37 THIS SECTION. PROVIDED, HOWEVER, THAT A REGISTERED NEW MOTOR VEHICLE
38 DEALER OR QUALIFIED DEALER MAY ENGAGE IN BUSINESS AS A MOBILITY DEALER,
39 OR REPRESENT, ADVERTISE, OR OTHERWISE HOLD HIMSELF OR HERSELF OUT AS
40 ENGAGED OR INTENDING TO ENGAGE IN THE BUSINESS OF SELLING, DISPLAYING,
41 OFFERING, ADVERTISING OR INVENTORYING MOBILITY VEHICLES IN THIS STATE,
42 WITHOUT HAVING BEEN ISSUED TO HIM OR HER A CERTIFICATE OF REGISTRATION
43 AS A MOBILITY DEALER.

44 c. The issuance of such certificate of registration to a new motor
45 vehicle dealer, a qualified dealer, MOBILITY DEALER or other motor vehi-
46 cle dealer shall be deemed to include the right to operate motor vehi-
47 cles, motorcycles and trailers to the extent permitted by subdivision
48 eight of this section, instead of obtaining vehicle registration as
49 provided by sections four hundred one and four hundred ten of this
50 title. The provisions of this section shall not apply to persons engaged
51 in the business of buying, selling or dealing in snowmobiles and/or snow
52 travellers.

53 S 3. The opening paragraph and paragraph a of subdivision 6-b of
54 section 415 of the vehicle and traffic law, as amended by chapter 7 of
55 the laws of 2000, are amended to read as follows:

1 Dealer, qualified dealer, MOBILITY DEALER, and new motor vehicle deal-
2 er surety bond. a. As a condition to obtaining a registration certif-
3 icate pursuant to this section, every new motor vehicle dealer applicant
4 [and], every qualified dealer applicant AND EVERY MOBILITY DEALER shall
5 obtain and continue in effect a surety bond in an amount of fifty thou-
6 sand dollars executed by a surety company authorized to transact busi-
7 ness in the state by the insurance department of the state. As a condi-
8 tion to obtaining a registration certificate pursuant to this section,
9 EVERY MOBILITY DEALER APPLICANT AND every dealer applicant who is apply-
10 ing for a registration certificate in the first instance or who sold two
11 hundred motor vehicles or fewer in the previous calendar year shall
12 obtain and continue in effect a surety bond in an amount of ten thousand
13 dollars executed by a surety company authorized to transact business in
14 the state by the insurance department of the state. As a condition of
15 obtaining a registration certificate pursuant to this section, every
16 dealer applicant who sold more than two hundred motor vehicles in the
17 previous calendar year shall obtain and continue in effect a surety bond
18 in an amount of twenty-five thousand dollars executed by a surety compa-
19 ny authorized to transact business in the state by the insurance depart-
20 ment of the state. The bonds shall be approved as to form by the commis-
21 sioner and shall be conditioned on the new motor vehicle dealer's,
22 qualified dealer's, and dealer's: payment of all valid bank drafts,
23 including checks, drawn by such dealer for the purchase of motor vehi-
24 cles; transfer of good title to each motor vehicle such dealer sells;
25 safekeeping of all customer deposits related to the sale of a motor
26 vehicle between the time of receipt of such customer deposit and the
27 transfer of good title to the vehicle to the customer; payment for all
28 fines imposed upon the new motor vehicle dealer, qualified dealer, or
29 dealer by the commissioner pursuant to the provisions of this chapter;
30 and such dealer's repayment of any overcharges of a customer by such
31 dealer for the vehicle registration and titling charges payable to the
32 commissioner for registering and titling the sold vehicle.

33 S 4. Paragraph c of subdivision 7 of section 415 of the vehicle and
34 traffic law, as amended by chapter 7 of the laws of 2000, is amended and
35 a new paragraph b-1 is added to read as follows:

36 B-1. REGISTRATION CERTIFICATES FOR MOBILITY DEALERS. (I) APPLICATION.
37 IF A PERSON MAKES APPLICATION, UNDER PENALTY OF PERJURY, FOR A REGISTRA-
38 TION CERTIFICATE AS A MOBILITY DEALER, THE COMMISSIONER SHALL ISSUE A
39 REGISTRATION AS A MOBILITY DEALER TO SUCH DEALER UPON PAYMENT OF THE
40 PRESCRIBED FEE AND ANY REQUIREMENTS THE COMMISSIONER MAY PRESCRIBE BY
41 REGULATION.

42 (II) RIGHTS OF MOBILITY DEALERS. NOTWITHSTANDING ANY OTHER LAW OR
43 RULE, A PERSON HOLDING A MOBILITY DEALER CERTIFICATE SHALL HAVE THE
44 RIGHT TO:

45 (A) DISPLAY, INVENTORY, ADVERTISE, SOLICIT, OR DEMONSTRATE ANY MOBILI-
46 TY VEHICLE, REGARDLESS OF THE CHASSIS MAKE OF THE MOBILITY VEHICLE, AND
47 REGARDLESS OF WHETHER OWNERSHIP OF SUCH MOBILITY VEHICLE IS HELD BY A
48 NEW MOTOR VEHICLE DEALER INSIDE OR OUTSIDE THIS STATE;

49 (B) ARRANGE, NEGOTIATE, AND/OR ASSIST CONSUMERS AS REGARDS THE
50 PURCHASE OF ANY MOBILITY VEHICLE;

51 (C) SELL AND INSTALL MOBILITY EQUIPMENT AND ACCESSORIES AND OTHER
52 GOODS AND SERVICES TO MEET THE NEEDS PARTICULAR TO DISABLED DRIVERS AND
53 PASSENGERS;

54 (D) PROVIDE MOBILITY VEHICLE MAINTENANCE AND REPAIR SERVICES.

55 (III) PROHIBITIONS. NOTWITHSTANDING ANY OTHER LAW OR RULE, A PERSON
56 HOLDING A MOBILITY DEALER CERTIFICATE SHALL NOT HAVE THE RIGHT TO

1 PERFORM REPAIRS ON MOBILITY VEHICLES OR OTHER MOTOR VEHICLES, WITHOUT
2 OBTAINING A LICENSE AS A REPAIR SHOP PURSUANT TO ARTICLE 12-A OF THIS
3 CHAPTER, HOWEVER, A MOBILITY DEALER MAY, WITHOUT OBTAINING SUCH LICENSE,
4 PERFORM REPAIRS ON PARTS WHICH ARE UNIQUE TO MOBILITY VEHICLES AND WERE
5 NOT PART OF THE ORIGINAL MANUFACTURED MOTOR VEHICLE.

6 (IV) REGULATIONS BY THE COMMISSIONER. THE COMMISSIONER SHALL HAVE THE
7 POWER TO PROMULGATE SUCH REGULATIONS AS ARE NECESSARY TO IMPLEMENT
8 MOBILITY DEALER REGISTRATION AND ESTABLISH REASONABLE AND APPROPRIATE
9 QUALIFICATIONS FOR SUCH DEALERS.

10 c. Registration certificate for other than new motor vehicle dealer,
11 MOBILITY DEALER or qualified dealer. If the commissioner approves the
12 application of an applicant for a registration certificate other than a
13 new motor vehicle dealer certificate or a qualified dealer certificate,
14 upon payment of the prescribed fee, he or she shall issue a registration
15 certificate in such form as he or she may prescribe.

16 S 5. Section 198-a of the general business law is amended by adding a
17 new subdivision (p) to read as follows:

18 (P) THIS SECTION SHALL NOT APPLY TO MOBILITY EQUIPMENT AS DEFINED IN
19 SUBDIVISION ONE OF SECTION FOUR HUNDRED FIFTEEN OF THE VEHICLE AND TRAF-
20 FIC LAW.

21 S 6. Section 198-b of the general business law is amended by adding a
22 new subdivision h to read as follows:

23 H. THIS SECTION SHALL NOT APPLY TO MOBILITY EQUIPMENT AS DEFINED IN
24 SUBDIVISION ONE OF SECTION FOUR HUNDRED FIFTEEN OF THE VEHICLE AND TRAF-
25 FIC LAW.

26 S 7. This act shall take effect on the one hundred twentieth day after
27 it shall become a law.