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:

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

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

LBD04356-06-1

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 OR HER, if such vehicles were purchased, acquired or otherwise obtained by such person for the purpose of resale, will be regarded as 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.

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

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

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

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

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

(B) PUBLIC OFFICERS WHILE PERFORMING THEIR OFFICIAL DUTIES;

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

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

(D) FINANCIAL INSTITUTIONS WHO SELL REPOSSESSED MOBILITY VEHICLES;

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

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

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

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

(II) CONTAINS AT LEAST ONE OF THE FOLLOWING:

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

(B) AN ELECTRONIC OR MECHANICAL WHEELCHAIR RAMP; OR

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

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

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

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

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

S 3. The opening paragraph and paragraph a of subdivision 6-b 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:

Dealer, qualified dealer, MOBILITY DEALER, and new motor vehicle dealer surety bond. a. As a condition to obtaining a registration certificate pursuant to this section, every new motor vehicle dealer applicant [and], every qualified dealer applicant AND EVERY MOBILITY DEALER shall obtain and continue in effect a surety bond in an amount of fifty thousand dollars executed by a surety company authorized to transact business in the state by the insurance department of the state. As a condition to obtaining a registration certificate pursuant to this section, EVERY MOBILITY DEALER APPLICANT AND every dealer applicant who is applying for a registration certificate in the first instance or who sold two hundred motor vehicles or fewer in the previous calendar year shall obtain and continue in effect a surety bond in an amount of ten thousand dollars executed by a surety company authorized to transact business in the state by the insurance department of the state. As a condition of obtaining a registration certificate pursuant to this section, every dealer applicant who sold more than two hundred motor vehicles in the previous calendar year shall obtain and continue in effect a surety bond in an amount of twenty-five thousand dollars executed by a surety company authorized to transact business in the state by the insurance department of the state. The bonds shall be approved as to form by the commissioner and shall be conditioned on the new motor vehicle dealer's, qualified dealer's, and dealer's: payment of all valid bank drafts, including checks, drawn by such dealer for the purchase of motor vehicles; transfer of good title to each motor vehicle such dealer sells; safekeeping of all customer deposits related to the sale of a motor vehicle between the time of receipt of such customer deposit and the transfer of good title to the vehicle to the customer; payment for all fines imposed upon the new motor vehicle dealer, qualified dealer, or dealer by the commissioner pursuant to the provisions of this chapter; and such dealer's repayment of any overcharges of a customer by such dealer for the vehicle registration and titling charges payable to the commissioner for registering and titling the sold vehicle.

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

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

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

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

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

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

(D) PROVIDE MOBILITY VEHICLE MAINTENANCE AND REPAIR SERVICES.

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

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

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

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

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

(P) THIS SECTION SHALL NOT APPLY TO MOBILITY EQUIPMENT AS DEFINED IN SUBDIVISION ONE OF SECTION FOUR HUNDRED FIFTEEN OF THE VEHICLE AND TRAFFIC LAW.

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

H. THIS SECTION SHALL NOT APPLY TO MOBILITY EQUIPMENT AS DEFINED IN SUBDIVISION ONE OF SECTION FOUR HUNDRED FIFTEEN OF THE VEHICLE AND TRAFFIC LAW.

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