

2366

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 14, 2013

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Introduced by M. of A. WEINSTEIN, MILLMAN, COLTON -- Multi-Sponsored by  
-- M. of A. CLARK, GOTTFRIED, HEASTIE, HOOPER, JACOBS, ORTIZ, WEISEN-  
BERG, 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 396-p of the general business law, as added by  
2 chapter 736 of the laws of 1978, is amended by adding a new subdivision  
3 2-a to read as follows:  
4     2-A. ANY RETAIL DEALER WHO NEGOTIATES PRIMARILY IN A LANGUAGE OTHER  
5 THAN ENGLISH, ORALLY OR IN WRITING, IN THE COURSE OF ENTERING INTO A  
6 CONTRACT PROVIDED FOR IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS  
7 SECTION, SHALL DELIVER TO THE CONSUMER WHO IS THE OTHER PARTY TO SUCH  
8 CONTRACT AND PRIOR TO THE EXECUTION OF SUCH CONTRACT, AN UNSIGNED TRANS-  
9 LATION OF SUCH CONTRACT, IN THE LANGUAGE IN WHICH SUCH CONTRACT WAS  
10 NEGOTIATED.  
11     (A) IN ADDITION TO THE PENALTIES IMPOSED UNDER SUBDIVISION SIX OF THIS  
12 SECTION, FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION SHALL  
13 ENTITLE THE AGGRIEVED CONSUMER TO CANCEL SUCH CONTRACT. UPON A FAILURE  
14 TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION, THE AGGRIEVED CONSUM-  
15 ER MAY CANCEL THE CONTRACT. FOR PURPOSES OF THIS SUBDIVISION, CANCELLA-  
16 TION SHALL BE DEEMED TO HAVE OCCURRED WHEN WRITTEN NOTICE OF CANCELLA-  
17 TION IS GIVEN TO THE RETAIL DEALER. NOTICE OF CANCELLATION, IF MAILED,  
18 SHALL BE DEEMED DELIVERED ON THE DATE OF THE POSTMARK. NOTICE OF CANCEL-  
19 LATION SHALL BE SUFFICIENT IF SUCH NOTICE INDICATES THE INTENTION OF THE  
20 CONSUMER NOT TO BE BOUND BY SUCH CONTRACT. IF A CONSUMER CANCELS A  
21 CONTRACT PURSUANT TO THIS PARAGRAPH, THE RETAIL DEALER SHALL NOT IMPOSE  
22 ANY PENALTY OR OBLIGATION UPON SUCH CONSUMER. WHEN A CONTRACT, WHICH HAS

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

LBD03597-01-3

1 BEEN SOLD AND ASSIGNED TO A FINANCIAL INSTITUTION IS CANCELED PURSUANT  
2 TO THIS SUBDIVISION, SUCH CONSUMER SHALL MAKE RESTITUTION TO AND HAVE  
3 RESTITUTION MADE BY THE RETAIL DEALER WITH WHOM HE OR SHE MADE THE  
4 CONTRACT, AND SHALL GIVE NOTICE OF CANCELLATION TO THE ASSIGNEE.  
5 NOTWITHSTANDING THAT THE CONTRACT WAS ASSIGNED WITHOUT RECOURSE, THE  
6 ASSIGNMENT SHALL BE DEEMED CANCELED AND THE ASSIGNOR SHALL PROMPTLY  
7 REPURCHASE THE CONTRACT FROM THE ASSIGNEE.

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

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

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

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

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

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

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

54 D. ANY RETAIL DEALER OR EMPLOYEE OF A DEALER WHO VIOLATES ANY OF THE  
55 PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY NOT TO

1 EXCEED FIFTY DOLLARS FOR THE FIRST OFFENSE AND TWO HUNDRED FIFTY DOLLARS  
2 FOR THE SECOND AND EACH SUBSEQUENT OFFENSE.

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

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

11 (A) IN ADDITION TO THE PENALTIES IMPOSED UNDER SECTION THREE HUNDRED  
12 FORTY-SIX OF THIS ARTICLE, FAILURE TO COMPLY WITH THE PROVISIONS OF THIS  
13 SUBDIVISION SHALL ENTITLE THE AGGRIEVED CONSUMER TO CANCEL SUCH AGREE-  
14 MENT. UPON A FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION,  
15 THE AGGRIEVED CONSUMER MAY CANCEL THE AGREEMENT. FOR PURPOSES OF THIS  
16 SUBDIVISION, CANCELLATION SHALL BE DEEMED TO HAVE OCCURRED WHEN WRITTEN  
17 NOTICE OF CANCELLATION IS GIVEN TO THE RETAIL DEALER. NOTICE OF CANCEL-  
18 LATION, IF MAILED, SHALL BE DEEMED DELIVERED ON THE DATE OF THE POST-  
19 MARK. NOTICE OF CANCELLATION SHALL BE SUFFICIENT IF SUCH NOTICE INDI-  
20 CATES THE INTENTION OF THE CONSUMER NOT TO BE BOUND BY SUCH AGREEMENT.  
21 IF A CONSUMER CANCELS AN AGREEMENT PURSUANT TO THIS PARAGRAPH, THE  
22 RETAIL DEALER SHALL NOT IMPOSE ANY PENALTY OR OBLIGATION UPON SUCH  
23 CONSUMER. WHEN AN AGREEMENT, WHICH HAS BEEN SOLD AND ASSIGNED TO A  
24 FINANCIAL INSTITUTION IS CANCELED PURSUANT TO THIS SUBDIVISION, SUCH  
25 CONSUMER SHALL MAKE RESTITUTION TO AND HAVE RESTITUTION MADE BY THE  
26 RETAIL DEALER WITH WHOM HE OR SHE MADE THE AGREEMENT, AND SHALL GIVE  
27 NOTICE OF CANCELLATION TO THE ASSIGNEE. NOTWITHSTANDING THAT THE AGREE-  
28 MENT WAS ASSIGNED WITHOUT RECOURSE, THE ASSIGNMENT SHALL BE DEEMED  
29 CANCELED AND THE ASSIGNOR SHALL PROMPTLY REPURCHASE THE AGREEMENT FROM  
30 THE ASSIGNEE.

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

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

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