

STATE OF NEW YORK

S. 5380--A
Cal. No. 1056

A. 6884--A

2017-2018 Regular Sessions

SENATE - ASSEMBLY

March 23, 2017

IN SENATE -- Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee and committed to the Committee on Finance -- 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

IN ASSEMBLY -- Introduced by M. of A. ABBATE, HARRIS, TITONE, LENTOL, CYMBROWITZ, CUSICK, COLTON, McDONOUGH -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the vehicle and traffic law, in relation to requiring automobile brokers to be licensed

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 736 of the general business law,
2 as added by chapter 616 of the laws of 1988, is amended to read as
3 follows:
4 1. "Automobile broker business" means any person who, for a fee,
5 commission or other valuable consideration, regardless of whether such
6 fee, commission, or consideration is paid directly by a consumer, offers
7 to provide, provides, or represents that he or she will provide a
8 service of purchasing, arranging, assisting, facilitating or effecting
9 the purchase or lease of an automobile as agent, broker, or intermediary
10 for a consumer. "Automobile broker business" does not include any person
11 registered as a dealer pursuant to article sixteen of the vehicle and
12 traffic law, or any person who sells, offers for sale or lease or acts
13 as agent, broker or intermediary in effecting the purchase or lease of
14 three or [~~less~~] fewer automobiles in any calendar year, or any motor

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

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1 vehicle franchisor, manufacturer, or distributor registered under arti-
2 cle sixteen of the vehicle and traffic law and subject to paragraph (y)
3 of subdivision two of section four hundred sixty-three of the vehicle
4 and traffic law.

5 § 2. The general business law is amended by adding a new section 736-a
6 to read as follows:

7 § 736-a. License required. 1. No person shall engage in business as an
8 automobile broker business, as defined in section seven hundred thirty-
9 six of this article, without first having been issued a certificate of
10 registration for an automobile broker business pursuant to paragraph c
11 of subdivision seven of section four hundred fifteen of the vehicle and
12 traffic law.

13 2. A certificate of registration for an automobile broker business
14 shall not permit the registrant to display for sale or lease any new or
15 used motor vehicles without registration as a dealer under section four
16 hundred fifteen of the vehicle and traffic law.

17 3. A person holding a license as an automobile broker business shall
18 not also hold a certificate of registration as a "new motor vehicle
19 dealer" as defined in section four hundred fifteen of the vehicle and
20 traffic law.

21 § 3. Paragraphs (e), (f) and (g) of subdivision 1 and subdivision 3 of
22 section 738 of the general business law, as added by chapter 616 of the
23 laws of 1988, paragraph (e) of subdivision 1 as amended by chapter 579
24 of the laws of 2011, are amended to read as follows:

25 (e) A description of any other services and an itemization of the
26 charges for each. Such description shall include disclosure of the auto-
27 mobile dealer from which the automobile was purchased or leased, as well
28 as all fees, commissions or other valuable considerations paid by an
29 automobile dealer to the automobile broker business for [~~selling,~~
30 arranging, assisting or effecting the sale or lease of an automobile as
31 agent, broker, or intermediary between the consumer and the automobile
32 dealer. If any such fees, commissions or considerations are to be paid
33 to the automobile broker business by such dealer, there shall be a
34 statement in immediate proximity to such disclosure that the amounts
35 disclosed are to be paid by the dealer to the automobile broker busi-
36 ness.

37 (f) If a consumer elects to cancel the contract pursuant to paragraph
38 (b) or (c) of this subdivision, he or she shall notify in writing the
39 automobile broker business at the address specified in the contract. The
40 automobile broker business shall make a full refund to the consumer
41 within ten business days following receipt of the request for a refund.
42 The contract shall contain a statement, setting forth the consumer's
43 right to cancel the contract under paragraphs (b) and (c) of this subdivi-
44 sion and the refund obligations of the automobile broker business.

45 (g) The statements required by paragraphs (a), (b), (c), (e) and (f)
46 of this subdivision shall be printed in at least ten point bold type.

47 3. An automobile broker business shall deliver to the consumer or mail
48 to him or her at the address shown on the contract, an executed copy
49 thereof.

50 § 4. Subdivision 1 of section 740-a of the general business law, as
51 added by chapter 579 of the laws of 2011, is amended to read as follows:

52 1. Automobile broker businesses shall obtain and continue in effect a
53 surety bond in an amount of [~~seventy-five~~] one hundred thousand dollars
54 executed by a surety company authorized to transact business in the
55 state by the [~~insurance~~] department of financial services of the state
56 or its successor. The bonds shall be approved as to form by the secre-

1 tary of state and shall be conditioned on the automobile broker busi-
2 ness' payment of all valid bank drafts, including checks, drawn for the
3 purchase of motor vehicles and safekeeping of all customer deposits
4 related to the sale of a motor vehicle between the time of receipt of
5 such customer deposit and the transfer of good title to the vehicle to
6 the customer.

7 § 5. Section 741-a of the general business law, as added by chapter
8 579 of the laws of 2011, is amended to read as follows:

9 § 741-a. Advertising. Automobile broker businesses shall clearly and
10 conspicuously disclose the following in all advertisements in any medi-
11 um, and in any print advertisement such disclosures shall not appear in
12 any footnotes and shall be situated in the top half of any such adver-
13 tisement in an easily readable typeface:

14 (a) That the automobile broker business is not a [~~licensed~~] registered
15 new motor vehicle dealer but is a registered automobile broker business
16 as defined in section four hundred fifteen of the vehicle and traffic
17 law;

18 (b) The registration number issued to the automobile broker business
19 pursuant to section four hundred fifteen of the vehicle and traffic law;

20 (c) Whether any fees may be imposed by the automobile broker business
21 for services rendered. Details of such compensation shall be provided by
22 the automobile broker business upon request by the consumer; and

23 [~~(e)~~] (d) That no warranty repair services will be provided by the
24 automobile broker business.

25 § 6. Subdivision 1 of section 415 of the vehicle and traffic law is
26 amended by adding a new paragraph m to read as follows:

27 m. "Automobile broker business" shall have the meaning set forth in
28 subdivision one of section seven hundred thirty-six of the general busi-
29 ness law.

30 § 7. Section 415 of the vehicle and traffic law is amended by adding a
31 new subdivision 3-a to read as follows:

32 3-a. Automobile broker business registration. No person shall engage
33 in the automobile broker business or represent or advertise that he or
34 she is engaged or intends to engage in the automobile broker business in
35 this state, unless there shall have been issued to him or her a certif-
36 icate of registration as an automobile broker business by the commis-
37 sioner under this section pursuant to an application for registration
38 submitted pursuant to subdivision five of this section.

39 § 8. Subdivision 5 of section 415 of the vehicle and traffic law is
40 amended by adding a new paragraph b-3 to read as follows:

41 b-3. In the case of an application for registration as an automobile
42 broker business, the name and address of the surety company which will
43 issue the bond required by subdivision one of section seven hundred
44 forty-a of the general business law. If the bond is to be issued by an
45 authorized agent of the surety company licensed by the state, then the
46 name and address of that agent may be provided in lieu of the informa-
47 tion concerning the surety company.

48 § 9. Paragraph d of subdivision 9 of section 415 of the vehicle and
49 traffic law, as amended by chapter 254 of the laws of 2010, is amended
50 to read as follows:

51 d. Has failed to comply with any of the rules and regulations of the
52 commissioner for the enforcement of this article or with any provision
53 of this chapter or article thirty-five-B of the general business law
54 applicable thereto; or

55 § 10. This act shall take effect on the one hundred eightieth day
56 after it shall have become a law; provided, however, that the commis-

1 sioner of the department of motor vehicles shall take actions necessary
2 to provide for the issuance of registration certificates pursuant to
3 section 415 of the vehicle and traffic law, as amended by sections six,
4 seven, eight and nine of this act, prior to such date.