STATE OF NEW YORK

S. 5380 A. 6884

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

IN ASSEMBLY -- Introduced by M. of A. ABBATE -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business 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:

Section 1. Subdivision 1 of section 736 of the general business law, as added by chapter 616 of the laws of 1988, is amended and two new subdivisions 4 and 5 are added to read as follows:

1. "Automobile broker business" means any person who, for a fee, commission or other valuable consideration paid by a consumer offers to provide, provides, or represents that he will provide a service of purchasing, arranging, assisting**, facilitating** or effecting the purchase of an automobile as agent, broker, or intermediary for a consumer. **"Automobile broker business" shall also include any person who acts as an agent, broker or intermediary in effectuating or facilitating the lease of an automobile, regardless of whether such person receives consideration from the consumer.** "Automobile broker business" does not include any person registered as a dealer pursuant to article sixteen of the vehicle and traffic law, or any person who sells, offers for sale **or lease** or acts as agent, broker or intermediary in effecting the purchase **or lease** of three or less automobiles in any calendar year.

4. "Commissioner" means the commissioner of the department of motor vehicles.

5. "Division" means the division of criminal justice services.

§ 2. The general business law is amended by adding five new sections 736-a, 736-b, 736-c, 736-d and 736-e to read as follows:

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

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§ 736-a. License and surety bond required. 1. No person, corporation, partnership or firm shall hereafter carry on the business of an automobile broker, as defined in section seven hundred thirty-six of this article, without first having (a) received a license to engage in such practice in the manner prescribed in this article, and (b) obtained a surety bond prescribed in section seven hundred forty-a of this article.

2. No person shall own, control or operate, whether as a sole proprietor, partner, shareholder, officer, independent contractor or other person, an automobile broker business, as defined in section seven hundred thirty-six of this article, without first having (a) received a license to engage in such practice in the manner prescribed in this article, and (b) obtained a surety bond prescribed in section seven hundred forty-a of this article.

§ 736-b. Application for licenses. 1. Application for a license required under this article shall be in writing, under oath, and in the form prescribed by the commissioner, and shall contain the following:

(a) The exact name and the address of the applicant and its date of incorporation;

(b) The name and the business and residential address of each principal and officer of the applicant;

(c) If the applicant has any common ownership with any new motor vehicle dealer, as defined in section four hundred fifteen of the vehicle and traffic law, the complete name and address of such dealership;

(d) The complete address where the business of the applicant is to be conducted, showing the street and number, if any, post office and building and room number, if any, the office building and room number, if any, and the municipality and county;

(e) If the applicant has one or more branches, subsidiaries or affiliates operating in the state, the complete address of each such place of business; and

(f) A complete set of two fingerprint cards for each principal and officer of the applicant on a standard fingerprint card approved by the division and a fee pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, and amendments thereto, for the cost of the division's full search and retain procedures, which fee shall be remitted by the commissioner to the division for deposit by the comptroller into the general fund. Before approving such application the commissioner, or his or her designee, shall forward one copy of such fingerprint card and the processing fee to the division upon receipt of such fingerprints. The division shall forward to the commissioner a report with respect to the applicant's previous criminal history, if any, or a statement that the applicant has no previous criminal history according to its files. If additional copies of fingerprints are required, the applicant shall furnish them upon request.

2. Upon original application for a license to operate an automobile broker business, the applicant shall pay an application fee, in such amount as may be determined by the commissioner, not to exceed three hundred dollars. Upon application for a license renewal, the licensee shall pay a renewal processing fee in such amount as shall be determined by the commissioner, not to exceed three hundred dollars.

§ 736-c. Conditions precedent to licensing. Upon filing of an application for a license, if the commissioner shall be satisfied of the good character, competency and integrity of the applicant, and of the principals and officers thereof are such as to comply with the provisions of this article, he or she shall thereupon issue a license in duplicate to operate an automobile broker business in accordance with the provisions

of this article. The commissioner shall transmit one copy of such license to the licensee and file another with the commissioner. Such license shall remain in full force and effect for a period of two years unless it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the commissioner shall not so find, the commissioner shall not issue such license and the commissioner shall notify the applicant of the denial in writing. The commissioner shall approve or deny every application for license hereunder within ninety days from the filing thereof.

§ 736-d. Licensing. 1. Each license issued under this article shall state the address or addresses at which the business is to be conducted and shall state fully the name of the licensee, and the date and place of its incorporation and the expiration date of the license. A copy of such license shall be prominently posted in each place of business of the licensee. Such license shall not be transferable or assignable.

2. In the event the location at which the business is to be conducted shall be changed, the licensee shall forthwith notify the commissioner in writing, who shall thereupon without charge attach to the license a rider setting forth such changed location.

3. In the event that there shall be any change among the principals or officers of any licensee, the licensee shall forthwith notify the commissioner in writing, of the name and address of each new principal or officer, and shall submit a complete set of two fingerprint cards for each such principal or officer in accordance with the provisions of paragraph (f) of subdivision one of section seven hundred thirty-six-b of this article.

4. Prior to or upon the sale or transfer of all or the majority of the stock or assets of any automobile broker business, the new principals or officers shall apply for a new license with the commissioner in accordance with the provisions of section seven hundred thirty-six-b and section seven hundred thirty-six-c of this article. Such application shall be made within sixty days of such sale or transfer.

5. A license granted under the provisions of this article may be renewed by the commissioner upon application therefor by the licensee, in such form as the commissioner may prescribe, accompanied by the nonrefundable renewal processing fee pursuant to subdivision two of section seven hundred thirty-six-b of this article. In no event will renewal be granted more than six months after the date of expiration of a license. No person, firm, company, partnership or corporation shall carry on any business subject to this article during any period which may exist between the date of expiration of a license and the renewal thereof.

§ 736-e. Scope and duties under automobile broker license. 1. The automobile broker license shall permit a duly licensed automobile broker under this section to engage in the automobile broker business as defined in section seven hundred thirty-six of this article. A duly licensed automobile broker may not:

(a) deliver a vehicle to a consumer at any location other than the duly licensed new or used dealership that the broker arranged the sale through;

(b) transmit, handle or store any documents or materials with personally identifying information, or financial information of the consumer; or

(c) display for sale or lease any new or used motor vehicles without a valid new or used car dealership license.

2. A duly licensed broker under this section must disclose to the consumer any relationship with any dealership, and the amount of compen-

sation paid to the broker for arranging the sale of the vehicle for the dealer.

§ 3. Section 744 of the general business law is renumbered section 745 and a new section 744 is added to read as follows:

§ 744. Investigation by the attorney general. The attorney general shall investigate non-licensed automobile broker businesses engaged in the leasing of motor vehicles and shall make recommendations to the legislature concerning legislative proposals to effectuate the purposes of this article.

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

1. Automobile broker businesses shall obtain and continue in effect a surety bond in an amount of [~~seventy-five~~] **one hundred twenty-five** thousand dollars executed by a surety company authorized to transact business in the state by the [~~insurance~~] department **of financial services** of the state or its successor. The bonds shall be approved as to form by the secretary of state and shall be conditioned on the automobile broker business' payment of all valid bank drafts, including checks, drawn for the purchase of motor vehicles and 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.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the commissioner of the department of motor vehicles shall take actions necessary to provide for the issuance of licenses pursuant to section 736-d of the general business law, as added by section two of this act, prior to such date.