STATE OF NEW YORK

5380--B

Cal. No. 1056

2017-2018 Regular Sessions

IN SENATE

March 23, 2017

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 -- again amended and ordered reprinted, retaining its place in the order of third reading

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:

Section 1. Subdivision 1 of section 736 of the general business law, as added by chapter 616 of the laws of 1988, is amended to read as follows:

1. "Automobile broker business" means any person who, for a fee, commission or other valuable consideration**, regardless of whether such fee, commission, or consideration is** paid **directly** by a consumer**,** offers to provide, provides, or represents that he **or she** will provide a service of purchasing, arranging, assisting**, facilitating** or effecting the purchase **or lease** of an automobile as agent, broker, or intermediary for a 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~~] **fewer** automobiles in any calendar year**, or any motor vehicle franchisor, manufacturer, or distributor registered under article sixteen of the vehicle and traffic law who sells or leases new motor vehicles to employees, immediate family members of employees, retirees, or immediate family members of retirees as authorized by paragraph (y)**

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

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of subdivision two of section four hundred sixty-three of the vehicle and traffic law.

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

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

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

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

(e) A description of any other services and an itemization of the charges for each. Such description shall include disclosure of the automobile dealer from which the automobile was purchased or leased, as well as all fees, commissions or other valuable considerations paid by an automobile dealer to the automobile broker business for [~~selling,~~] arranging, assisting or effecting the sale or lease of an automobile as agent, broker, or intermediary between the consumer and the automobile dealer.

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

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

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

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

§ 741-a. Advertising. Automobile broker businesses shall clearly and conspicuously disclose the following in all advertisements in any medi-

um, and in any print advertisement such disclosures shall not appear in any footnotes and shall be situated in the top half of any such advertisement in an easily readable typeface:

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

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

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

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

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

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

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

3-a. Automobile broker business registration. No person shall engage in the automobile broker business or represent or advertise that he or she is engaged or intends to engage in the automobile broker business in this state, unless there shall have been issued to him or her a certificate of registration as an automobile broker business by the commissioner under this section pursuant to an application for registration submitted pursuant to subdivision five of this section.

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

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

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

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

§ 10. This act shall take effect on the one hundred eightieth 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 registration certificates pursuant to section 415 of the vehicle and traffic law, as amended by sections six, seven, eight and nine of this act, prior to such date.