STATE OF NEW YORK

6655

2019-2020 Regular Sessions

IN ASSEMBLY

March 14, 2019

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

AN ACT to amend the vehicle and traffic law and the general business law, in relation to designating new automotive broker businesses

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

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

n. "New automobile broker business" shall have the same meaning as set forth in subdivision four of section seven hundred thirty-six of the general business law.

§ 2. Section 736 of the general business law is amended by adding a new subdivision 4 to read as follows:

4. "New 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 a previously unregistered automobile as agent, broker, or intermediary for a consumer. "New automobile broker business" does not include any person registered as a new vehicle dealer for the new automobile brand or brands for which such services are provided, pursuant to article sixteen of the vehicle and traffic law nor any bona fide employee, as opposed to an independent contractor, of such a registered dealer while acting for such dealer. For the purposes hereof, any employee who, pursuant to department of labor guidelines, rules and regulations, would be an independent contractor for a registered dealer shall not be deemed a bona fide employee.

§ 3. Subdivision 3-a and paragraph b-3 of subdivision 5 of section 415 of the vehicle and traffic law, as added by chapter 477 of the laws of 2017, are amended to read as follows:

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

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3-a. Automobile broker business [~~registration~~] or new automobile broker business. No person shall engage in the automobile broker business, the new automobile broker business or represent or advertise that he or she is engaged or intends to engage in the automobile broker business or new 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 or new automobile broker business, as the case may be, by the commissioner under this section pursuant to an application for registration submitted pursuant to subdivision five of this section.

b-3. In the case of an application for registration as an automobile broker business or new 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.

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

e. Before application for a new automobile broker business is approved, the applicant must have submitted along with the application, written confirmation from the new motor vehicle manufacturer authorizing such applicant to serve as a broker for the sale or lease of the lines or makes of the new motor vehicles which applicant proposes to broker from the locations described in the application.

§ 5. Subdivision 1 of section 736-a of the general business law, as added by chapter 477 of the laws of 2017, is amended to read as follows:

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

§ 6. Section 737 of the general business law, as added by chapter 616 of the laws of 1988, is amended to read as follows:

§ 737. Advance fees prohibited. No automobile broker business or new automobile broker business shall solicit, receive or collect from a consumer any fee, or commission, in advance of the performance of those services specified in the contract as required by section seven hundred thirty-eight of this article.

§ 7. The opening paragraph of subdivision 1 of section 738 of the general business law, as amended by chapter 28 of the laws of 2018, is amended to read as follows:

Every contract between a consumer and an automobile broker business, which for the purposes of this section shall include new automobile broker businesses, for the purchase of an automobile shall be in writing, shall be dated, shall contain the street address of the automobile broker business and the consumer and shall be signed by the consumer and by the automobile broker business. Every contract shall comply with the requirements set forth in this section and contain the following:

§ 8. Section 740 of the general business law, as added by chapter 616 of the laws of 1988, is amended to read as follows:

§ 740. Escrow required for advance payments. All monies paid by a consumer to an automobile broker business or a new automobile broker business in connection with a transaction covered by this article shall

be trust funds in the possession of such automobile broker business **or new automobile broker business** and shall be deposited by it within five days after receipt thereof, in an account in a banking organization within the state. The automobile broker business **or new automobile broker business** shall thereupon notify in writing the consumer, giving the name and address of the banking organization and the amount deposited. The monies shall be held on deposit until fully applied to the contract price at the time the automobile is delivered to the consumer, unless sooner repaid in accordance with the provisions of this article.

§ 9. Section 740-a of the general business law, as added by chapter 579 of the laws of 2011 and subdivision 1 as amended by chapter 477 of the laws of 2017, is amended to read as follows:

§ 740-a. Automobile broker business **and new automobile broker business** surety bond. 1. Automobile broker businesses **and new automobile broker businesses** shall obtain and continue in effect a surety bond in an amount of one hundred thousand dollars executed by a surety company authorized to transact business in the state by the 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' **or new 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.

2. Recovery against a bond may be made by a person, including the state, who obtains a judgment against the automobile broker business **or new automobile broker business** for an act or omission on which the bond is conditioned if the act or omission occurred during the term of the bond. The total liability imposed on the surety under this section for all breaches of the bond condition is limited to the face amount of the bond. Such liability may include, but is not limited to, the amount of the valid bank drafts, including checks, drawn by the automobile broker business **or new automobile broker business** for the purchase of motor vehicles. In no event shall the surety on a bond be liable for total claims in excess of the bond amount, regardless of the number or nature of claims made against the bond or the number of years the bond remained in force.

3. Any surety issuing a bond pursuant to this subdivision shall be required to provide sixty days' notice to the secretary of state prior to the effective date of cancellation of the bond.

§ 10. Section 741 of the general business law, as added by chapter 616 of the laws of 1988, is amended to read as follows:

§ 741. Deceptive acts prohibited. It is hereby declared to be a deceptive trade practice and unlawful for an automobile broker business **or new automobile broker business** to misrepresent directly or indirectly in its advertising, promotional materials, sales presentation, or in any manner:

1. The nature of the services to be performed;

2. The time within which the services will be performed;

3. The cost of the services to be performed; and

4. The ability of the automobile broker business **or new automobile broker business** to perform the services.

§ 11. Section 741-a of the general business law, as amended by chapter 477 of the laws of 2017, is amended to read as follows:

§ 741-a. Advertising. Automobile broker businesses **and new automobile broker businesses** shall clearly and conspicuously disclose the following

in all advertisements in any medium, 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 **or new automobile broker business** is not a registered new motor vehicle dealer but is a registered automobile broker business **or new 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 **or new 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 **or new automobile broker business** for services rendered. Details of such compensation shall be provided by the automobile broker business **or new automobile broker business** upon request by the consumer; and

(d) That no warranty repair services will be provided by the automobile broker business **or new automobile broker business**.

§ 12. Section 415 of the vehicle and traffic law is amended by adding a new subdivision 21 to read as follows:

21. Penalties and rights of action for failure to obtain a certificate of registration as a new automobile broker pursuant to subdivision three-a and paragraph b-3 of subdivision five of this section. a. The commissioner, or any person designated by him or her, may proceed against a party who has operated as a new automobile broker without certificate of registration in accordance with the provisions of this article, in any one or more proceedings and by order require the offending party to pay the people of this state a penalty in a sum not to exceed two thousand dollars for each violation found to have been committed. Civil penalties assessed under this subdivision shall be paid to the commissioner for deposit into the state treasury, and unpaid civil penalties may be recovered by the commissioner in a civil action in the name of the commissioner. For the purposes of this subdivision, a "violation" shall mean each vehicle sold or leased to a consumer for which the party that failed to obtain certification as a new automobile broker has served as a new automobile broker.

b. In addition to any civil action brought by the commissioner or any person appointed by him, any complainant or complainants who are aggrieved by any violation of subdivision three-a and paragraph b-3 of subdivision five of this section, shall be entitled to sue for and have injunctive relief and damages against, any party in violation of subdivision three-a and paragraph b-3 of subdivision five of this section in any court of the state having jurisdiction over the parties. In any such judicial action or proceeding, the court may also award necessary costs and disbursements plus reasonable attorney's fees and costs.

§ 13. This act shall take effect immediately; provided that all automobile brokers registered on the effective date of this act shall have ninety days to come into compliance with the provisions of this act.