STATE OF NEW YORK

6655--D

2019-2020 Regular Sessions

IN ASSEMBLY

March 14, 2019

Introduced by M. of A. CARROLL, ABBATE, STIRPE, REYES, DenDEKKER, TAYLOR, CYMBROWITZ, DICKENS, M. G. MILLER, D'URSO, ENGLEBRIGHT, D. ROSENTHAL, GALEF, GOTTFRIED, RAMOS, DeSTEFANO, MIKULIN, SMITH, SAYEGH, WILLIAMS, COOK, ABINANTI, McDONOUGH, QUART, SEAWRIGHT, LiPETRI, REILLY, B. MILLER, ROZIC, PALUMBO, EPSTEIN, FERNANDEZ, RYAN, STECK, CRUZ, PHEFFER AMATO, PICHARDO, RAIA, RA, BENEDETTO, BYRNE, JACOBSON, BUCHWALD, HYNDMAN, PERRY, THIELE, SOLAGES, LAVINE, STERN, GARBARINO, GRIFFIN -- Multi-Sponsored by -- M. of A. DE LA ROSA, FITZPATRICK, HEVESI, LAWRENCE, SIMON -- 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 -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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. Paragraph a of subdivision 1 of section 415 of the vehicle and traffic law, as amended by chapter 554 of the laws of 2015, is amended and a new paragraph n is added to read as follows:

a. "Dealer" means a person engaged in the business of buying, selling or dealing in motor vehicles, motorcycles or trailers, other than mobile homes or manufactured homes, at retail or wholesale; except, however, trailers with an unladen weight of less than one thousand pounds. For the purposes of this section, a "mobile home" or "manufactured home" means a mobile home or manufactured home as defined in section one hundred twenty-two-c of this chapter. Any person who sells, or offers

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

LBD08916-15-9

for sale **or lease** more than five motor vehicles, motorcycles or trailers in any calendar year or who displays or permits the display of three or more motor vehicles, motorcycles or trailers for sale at any one time or within any one calendar month upon premises owned or controlled by him or her, if such vehicles were purchased, acquired or otherwise obtained by such person for the purpose of resale, will be regarded as a dealer. **For the purposes of this section, "offers for sale or lease" shall include, but not be limited to, the act of drawing the public's attention to, or the presentation or display of any motor vehicle, including the posting of images of any such vehicle, together with an offer to provide, the provision of, or a representation that such person may provide a service of arranging, assisting, facilitating or effecting the lease of such new motor vehicle, except this meaning shall not apply to any activity of a cooperative or other advertising program or fund as described in any franchise, as such term is defined by subdivision six of section four hundred sixty-two of this title.** Except as otherwise provided in subdivisions three, five, six-b, and seven of this section, the term "dealer" shall include a "new motor vehicle dealer" as defined by paragraph f of this subdivision and a "qualified dealer" as defined in paragraph g of this subdivision.

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 two new subdivisions 4 and 5 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; through a new motor vehicle dealer, 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 of such a registered dealer while acting for such dealer, nor any motor vehicle franchisor, manufacturer or distributor for the new automobile brand or brands for which such services are provided.

5. Notwithstanding any other subdivision of this section, the terms "automobile broker business" and "new automobile broker business" shall not include any entity that provides a service of purchasing, arranging, assisting, facilitating, or effecting the purchase or lease of a previously unregistered automobile as an agent, broker, or intermediary for a consumer, if that entity facilitates the purchase or lease of a new motor vehicle in this state from a new motor vehicle dealer only by means of an online new automobile referral service. For the purposes of this subdivision, "online new automobile referral service" means an organization, including, but not limited to a corporation, limited liability company, partnership, sole proprietor, or any other entity, that:

(a) operates an interactive website and/or smartphone application that facilitates the provision of services or consummation of transactions by marketplace entities and persons seeking such services or transactions on a digital platform specifically designed and built for online motor vehicle lease transactions;

(b) lists motor vehicles provided by multiple new motor vehicle dealers in this state;

(c) provides services, or the transactions facilitated thereby, on a multi-state basis pursuant to written contracts with new motor vehicle dealers which establish a predetermined price for the services to be rendered; and

(d) involves no in-person meeting as between a prospective lessee or purchaser and the operator of such interactive website and/or smartphone application.

§ 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:

3-a. Automobile broker business [~~registration~~] or new automobile broker business. a. 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. The commissioner shall not issue any certificate of registration authorized by this subdivision to any dealer, franchisee, franchisor, manufacturer, distributor, distributor branch or factory branch, as such terms are defined in section four hundred sixty-two of this title, or to any subsidiary, affiliate or controlled entity thereof.

c. As a condition of any certificate of registration issued pursuant to this subdivision, a new automobile broker business shall have, and continuously maintain, a place of business in this state for which it shall keep and maintain evidence that all necessary approvals, licenses and/or permits have been obtained from all local governing bodies to operate such place of business with customer or client traffic.

d. Every registered new automobile broker shall prominently and conspicuously post, in such a manner that it is likely to be noticeable to anyone entering its premises, its official business certificate of registration and a sign, which sign shall clearly state:

"(Name of registered new automobile broker) is not a franchised new motor vehicle dealership. We are not authorized or approved by a manufacturer or distributor to sell a motor vehicle or perform recall or original factory warranty work. If you order a search for a new motor vehicle from this broker, we must make a bona fide effort to solicit bids from at least three unaffiliated new motor vehicle dealers for a new motor vehicle on your behalf, including from your local dealer."

e. A new automobile broker business shall not provide, offer to provide, or represent that he or she will provide a service of purchasing, arranging, assisting, facilitating or effecting the purchase or lease of a previously unregistered automobile with a dealer located in any other state unless such state affords lawful means for the same business activity, such standards and requirements are equivalent to those contained in this article and article thirty-five-B of the general business law, the new automobile broker business is registered, permitted or licensed to perform such business activity in such other state and is otherwise in good standing with each governmental agency of such other state responsible for regulating such business activity. The commissioner of motor vehicles shall be empowered to determine the

substantial equivalence of such other state laws pertaining to the registration, permitting or licensure of such businesses.

f. Nothing in this subdivision shall be construed to prohibit a franchisor, manufacturer, or distributor from sponsoring activities intended to generate leads toward the sale or lease of a new motor vehicle by a franchisee.

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 and a statement indicating any interest in the applicant's business entity by a person or entity described in paragraph (f) of subdivision one or paragraph f of subdivision seven of this section. 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 1 of section 736-a of the general business law, as added by chapter 477 of the laws of 2017, is amended and a new subdivision 3 is added to read as follows:

1. (a) 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. A certificate of registration for a new automobile broker business is valid for a period of two years.

(b) No new automobile broker business shall represent or accept payment from, either directly or indirectly, a franchisee, dealer, franchisor, manufacturer and/or distributor, as such terms are defined in sections four hundred fifteen and four hundred sixty-two of the vehicle and traffic law.

(c) No new automobile broker business shall provide, offer to provide, or represent that he or she will provide a service of purchasing, arranging, assisting, facilitating or effecting the purchase or lease of a previously unregistered automobile with a dealer located in any other state unless such state affords lawful means for the same business activity, such standards and requirements set forth in the laws of such other state are equivalent to those contained in this article, the new automobile broker business has been registered, permitted or licensed to perform such business activity in such other state and is otherwise in good standing with each agency of such other state responsible for regulating such business activity. The commissioner of motor vehicles shall be empowered to determine the substantial equivalence of such other state laws pertaining to the regulation of such business activity, including consumer protections in any such law.

3. The commissioner of motor vehicles shall make necessary rules and regulations as may be appropriate for the proper enforcement of the provisions of this section.

§ 5. The general business law is amended by adding a new section 741-c to read as follows:

§ 741-c. Prohibitions related to private information. No person registered under this article shall request, receive, accept, handle, store or transmit the private information, as such term is defined in paragraph (b) of subdivision one of section eight hundred ninety-nine-aa of this chapter, of any consumer.

§ 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 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. **New automobile broker businesses shall obtain and continue in effect a surety bond in an amount of two hundred fifty 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 **and frauds** prohibited. **1.** 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.~~] **(a)** The nature of the services to be performed **and in the case of a new automobile broker that a third party will be paying for any such services**;

[~~2.~~] **(b)** The time within which the services will be performed;

[~~3.~~] **(c)** The cost of the services to be performed; [~~and~~

~~4.~~] **(d)** The ability of the automobile broker business **or new automobile broker business** to perform the services**; and**

(e) That the automobile broker business or new automobile broker business is affiliated with any automobile manufacturer and/or distributor, including the use of any trademarks or copyrighted material without the express, written consent of the owner of such material.

2. It shall be a fraudulent business practice for an automobile broker business or new automobile broker business to refuse to disclose to a motor vehicle dealer or new motor vehicle dealer the registration number provided by the department of motor vehicles pursuant to section four hundred fifteen of the vehicle and traffic law. Furthermore, it shall also be a fraudulent business practice for an automobile broker business or new automobile broker business to make any misrepresentation to a motor vehicle dealer or new motor vehicle dealer regarding the eligibility of any consumer for any discounts, reductions or any benefit programs regarding the sale or lease of a motor vehicle.

3. It shall be a fraudulent business practice for a new automobile broker business to fail to make a bona fide attempt to obtain a quote or offer from at least three unaffiliated dealers on behalf of a prospective buyer or lessee for a vehicle meeting the prospective buyer or lessee's specifications, including the new motor vehicle dealer located in closest proximity to the address of such prospective buyer or lessee's home or, in the case of any entity, its place of doing business.

4. It shall be a fraudulent business practice for a new automobile broker business to fail to act for the benefit of the prospective buyer or lessee, including by failing to make reasonable efforts to obtain the lowest possible price, down payment, number of payments, amount of payments, finance charges, annual percentage rate and/or fees for a new motor vehicle that meets the specifications of such prospective buyer or lessee.

§ 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 741-b of the general business law, as added by chapter 28 of the laws of 2018, is amended to read as follows:

§ 741-b. [~~Disclosure~~] **Disclosures. 1**. An automobile broker business **or new automobile broker business** shall provide a disclosure at the time such automobile broker business **or new automobile broker business** takes an order to search for a leased **or purchased** vehicle meeting the prospective **buyer or** lessee's specifications. Such disclosure shall provide the amount of any fees, commissions or other valuable consideration the automobile broker business **or new automobile broker business** expects to receive **for any assistance the automobile broker business provides in effecting the lease or purchase transaction, including any reasonably foreseeable fees or charges, including delivery fees. In the case of an automobile broker business this shall include**, if known, **any payments** from a dealer, lessor or any other person or entity for any assistance the automobile broker business provides in effecting the lease **or purchase** transaction. If the amount of any such fees, commissions or other valuable consideration the automobile broker business expects to receive is unknown at the time of the required disclosure, the automobile broker business shall disclose: (a) whether it has a contract with any dealer, lessor or any other person or entity for the provision of assistance in effecting a lease transaction; and (b) whether the automobile broker business may be compensated by the dealer, lessor or any other person or entity for any assistance in effecting such lease transaction. **Nothing in this subdivision shall be construed to permit the payment of any fees, commissions or other valuable consideration to a new automobile broker business by any dealer.**

2. A new automobile broker business shall provide an additional disclosure at the time such new automobile broker business takes an order to search for a vehicle meeting the prospective buyer or lessee's specifications. Such additional disclosure shall state that the broker shall make a bona fide attempt to obtain a bid, quote or offer from at least three unaffiliated dealers on behalf of the prospective buyer or lessee for a vehicle meeting the prospective buyer or lessee's specifications, including from the new motor vehicle dealer of such line make located closest to the home or place of business of such prospective buyer and that the new automobile broker has a duty to act for the benefit of the prospective buyer or lessee, including by making reasonable efforts to obtain the lowest possible price, down payment, number of

payments, amount of payments, finance charges, annual percentage rate and/or fees.

3. Each disclosure required by this section shall be acknowledged in writing by each respective prospective buyer or lessee.

§ 13. Section 742 of the general business law, as added by chapter 616 of the laws of 1988, is amended to read as follows:

§ 742. Action for recovery of damages by consumer. Any consumer injured by a violation of this article or by the breach by an automobile broker business or new automobile broker business of a contract which has been entered into pursuant to section seven hundred thirty-nine of this article may bring an action for recovery of damages. Judgment shall be entered in favor of a consumer in an amount not to exceed three times the actual damages, but in no case less than the amount paid by the buyer to the automobile broker business or new automobile broker business. The court may award reasonable attorney's fees to a prevailing plaintiff.

§ 14. Section 743 of the general business law, as amended by chapter 372 of the laws of 2016, is amended to read as follows:

§ 743. Enforcement [~~by~~]. 1. By attorney general. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court shall impose a civil penalty of not less than one thousand dollars and not more than three thousand dollars for each violation. In the case of an automobile broker, not less than one thousand dollars and not more than three thousand dollars for each violation; and in the case of a new automobile broker, not less than four thousand dollars and not more than ten thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

2. By local authorities. a. Municipalities may, pursuant to local law, act upon the business activity that is the subject of this article, provided that no local government may diminish the protections or requirements of this article or prevent enforcement of its provisions by appropriate state officials.

b. The provisions of this article may be enforced in the same manner as set forth in subdivision one of this section by the director of a municipal consumer affairs office or a business integrity commission, or by the town attorney, city corporation counsel, or other lawfully desig-

nated enforcement officer of a municipality or local government, and all monies collected thereunder shall be retained by such municipality or local government, provided that no local government may prevent enforcement of its provisions by appropriate state officials.

3. By private party. Any persons injured by any violation of this article may bring an action in his or her own name against an automobile broker business or a new automobile broker business to enjoin such unlawful act or practice, an action to recover his or her actual damages and statutory damages of four thousand dollars, or both such actions. In the case of a new motor vehicle dealer, injury shall include depriving a new motor vehicle dealer located closest to a lessee or purchaser the opportunity to bid on such lease or purchase as entitled by this article. Damages shall include the value of incentive payments, bonuses, holdbacks or similar payments that would have been realized had a lessee or purchaser purchased or leased such vehicle from the new motor vehicle dealer in closest proximity to such lessee or purchaser but for the actions of a person who knowingly aided the violation of the provisions of this article. Nothing in this section shall require a franchisor, manufacturer, or distributor to grant a new motor vehicle dealer a benefit under an incentive, bonus, holdback or similar payment that the new motor vehicle dealer did not earn or for which the new motor dealer did not complete or qualify. In any such judicial action or proceeding, the court may award reasonable attorney's fees and costs. Such actions may be brought regardless of whether or not the underlying violation is consumer-oriented or has a public impact. The court may, in its discretion, increase the award of damages if the court finds the defendant willfully or knowingly violated this section. The court shall award reasonable attorney's fees and costs to a prevailing plaintiff.

§ 15. Section 415 of the vehicle and traffic law is amended by adding two new subdivisions 21 and 22 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 persons injured 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 the case of a new motor vehicle dealer, injury shall include depriving the new motor vehicle dealer located closest to a lessee or purchaser the opportunity to bid on such lease or purchase as entitled by this article. Damages shall include the value of

incentive payments, bonuses, holdbacks or similar payments that would have been realized had a lessee or purchaser purchased or leased such vehicle from the new motor vehicle dealer in closest proximity to such lessee or purchaser but for the actions of a person who knowingly aided the violation of the provisions of this article. Nothing in this subdivision shall require a franchisor, manufacturer, or distributor to grant a new motor vehicle dealer a benefit under an incentive, bonus, holdback or similar payment that the new motor vehicle dealer did not earn or for which the new motor dealer did not complete or qualify. In any such judicial action or proceeding, the court may award reasonable attorney's fees and costs. Such actions may be brought regardless of whether or not the underlying violation is consumer-oriented or has a public impact. The court may, in its discretion, increase the award of damages if the court finds the defendant willfully or knowingly violated this section. The court shall award reasonable attorney's fees and costs to a prevailing plaintiff.

22. New automobile broker record requirements. a. New automobile brokers shall maintain a permanently bound book in which shall be recorded the make, model, year color and vehicle identification number of all previously unregistered automobiles for which such broker has provided a service of purchasing, arranging, assisting, facilitating or effecting the purchase or lease of such automobile within any preceding six-year period. Such book shall also have recorded a record of the name and address of the purchaser or lessor of such automobile, the date of sale or commencement of lease of such automobile and the name and address of the dealer from which the automobile was purchased or leased.

b. New automobile brokers shall maintain a permanently bound book in which shall be recorded all completed orders to search for a previously unregistered automobile. Such book shall also have recorded a record of the date of such order, the name and address of the person or entity ordering such search, the automobile specifications provided by such prospective buyer or lessee and the name and address of the dealers solicited for a quote or offer on behalf of such prospective buyer or lessee.

c. Such books shall be open for inspection by the commissioner, or his or her agent, during reasonable business hours. The commissioner may establish by rule the form of any such book.

d. As an alternative to a bound book, a new automobile broker may use a computer and software approved by the department to maintain the records required to be kept by this section, provided all information required by paragraphs a and b of this section are recorded and the records conform to such additional requirements as determined by the commissioner.

§ 16. Section 465 of the vehicle and traffic law is amended by adding a new subdivision 8 to read as follows:

8. A franchisor may require a franchisee to submit to a franchisor the name and registration number of any new automobile broker business that arranged, assisted, facilitated or effected the purchase or lease of any vehicle from such dealer. A franchisor may charge back the franchisee any sales, advertising or marketing incentive payment or any other payment or benefit associated with the sale or lease of such vehicle for failure to submit such information.

§ 17. The general business law is amended by adding a new section 737-a to read as follows:

§ 737-a. Bona fide bid soliciting required. 1. In providing a service of purchasing, arranging, assisting, facilitating or effecting the

purchase or lease of a previously unregistered automobile, a new automobile broker business shall solicit bids from at least three unaffiliated new motor vehicle dealers on behalf of a prospective buyer or lessee for a new motor vehicle meeting the specifications of such prospective buyer or lessee, including the new motor vehicle dealer located in closest proximity to the home address of such prospective buyer or lessee or, in the case of an entity, its place of doing business.

2. The commissioner of motor vehicles may adopt rules and regulations necessary to effectuate the provisions of this section.

§ 18. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 19. 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.