

STATE OF NEW YORK

6655--E

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, QUART, SEAWRIGHT, LiPETRI, REILLY, B. MILLER, ROZIC, PALUMBO, EPSTEIN, FERNANDEZ, RYAN, STECK, CRUZ, PHEFFER AMATO, PICHARDO, RA, BENEDETTO, BYRNE, JACOBSON, BUCHWALD, HYNDMAN, PERRY, THIELE, SOLAGES, LAVINE, STERN, GARBARINO, GRIFFIN, JONES, BUTTENSCHON, BLAKE, PAULIN, BRAUNSTEIN, FALL, FRONTUS, L. ROSENTHAL, WALLACE -- 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 -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, the vehicle and traffic law and the personal property 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:

- 1 Section 1. Subdivision 1 of section 736 of the general business law,
- 2 as amended by chapter 28 of the laws of 2018, is amended and a new
- 3 subdivision 4 is added to read as follows:
- 4 1. "Automobile broker business" means any person who, for a fee,
- 5 commission or other valuable consideration, regardless of whether such

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

LBD08916-23-0

1 fee, commission, or consideration is paid directly by a consumer, offers
2 to provide, provides, or represents that he or she will provide a
3 service of purchasing, arranging, assisting, facilitating or effecting
4 the purchase or lease of an automobile as agent, broker, or intermediary
5 for a consumer. "Automobile broker business" does not include any person
6 registered as a new motor vehicle dealer or qualified dealer pursuant to
7 article sixteen of the vehicle and traffic law nor any bona fide employ-
8 ee of a registered new motor vehicle dealer or qualified dealer while
9 acting for such new motor vehicle dealer or qualified dealer, or any
10 person who sells, offers for sale or lease or acts as agent, broker or
11 intermediary in effecting the purchase or lease of three or fewer auto-
12 mobiles in any calendar year, any national service which aggregates
13 information for consumers, but does not otherwise have contact with
14 consumers, ~~or~~ any motor vehicle franchisor, manufacturer, or distribu-
15 tor, distributor branch or factory branch registered under article
16 sixteen of the vehicle and traffic law.

17 4. "New motor vehicle" shall have the same meaning as defined in
18 subdivision eleven of section four hundred sixty-two of the vehicle and
19 traffic law.

20 § 2. Section 736-a of the general business law, as added by chapter
21 477 of the laws of 2017, is amended to read as follows:

22 § 736-a. Registration required. 1. (a) No person shall engage in busi-
23 ness as an automobile broker business, as defined in section seven
24 hundred thirty-six of this article, without first having been issued a
25 certificate of registration for an automobile broker business pursuant
26 to paragraph c of subdivision seven of section four hundred fifteen of
27 the vehicle and traffic law. A certificate of registration for an auto-
28 mobile broker business shall be valid for a period of two years.

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

34 (c) No automobile broker business shall perform any services involving
35 the purchasing, arranging, assisting, facilitating or effecting the
36 purchase or lease of an automobile as agent, broker, or intermediary for
37 a consumer, unless done pursuant to a contract that complies with the
38 provisions of section seven hundred thirty-eight of this article.

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

43 3. Any person that sells or leases five or more vehicles in a calendar
44 year to or through one or more automobile broker businesses shall be
45 deemed to be dealing in motor vehicles as that term is used in paragraph
46 a of subdivision one of section four hundred fifteen of the vehicle and
47 traffic law.

48 4. The commissioner of motor vehicles shall adopt rules and regu-
49 lations necessary to effectuate the provisions of this section, includ-
50 ing regulations that require the disclosure of the name, address, and
51 registration number of an automobile broker business that provided the
52 service of arranging, assisting, facilitating or effecting the purchase
53 or lease of any new motor vehicle, and the fee collected by the broker
54 from the consumer for providing such service. Such rules and regulations
55 shall require that such information of the automobile broker business
56 and its fee for service be printed on any invoice, bill of sale, or

1 buyer's order, and on any application for registration or title submit-
2 ted by any dealer to the department of motor vehicles on behalf of the
3 consumer related to such purchased or leased motor vehicle.

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

6 § 737-a. Bona fide bid soliciting required. 1. On behalf of each
7 consumer executing a contract that conforms to the requirements of
8 subdivision three of section seven hundred thirty-eight of this article,
9 an automobile broker business shall solicit a bid, from at least three
10 new motor vehicle dealers of the same line-make, that meets the specifi-
11 cations of such prospective buyer or lessee, including from the new
12 motor vehicle dealer located in closest proximity to the home address of
13 a prospective buyer or lessee of a new motor vehicle or, in the case of
14 an entity, the place of doing business of such prospective buyer or
15 lessee of a new motor vehicle. Whenever an automobile broker business
16 may choose bid specifications on behalf of a consumer, such automobile
17 broker business shall solicit a bid matching such specifications from at
18 least three new motor vehicle dealers of the same line-make, including
19 from the new motor vehicle dealer located in closest proximity to the
20 home address of a prospective buyer or lessee of a new motor vehicle or,
21 in the case of an entity, the place of doing business of such prospec-
22 tive buyer or lessee of a new motor vehicle.

23 2. At a minimum, an automobile broker business that solicits a bid
24 pursuant to subdivision one of this section shall request the following
25 information as part of any solicitation to a new motor vehicle dealer:

26 (a) price or lease costs;
27 (b) down or similar payment;
28 (c) number of payments;
29 (d) amount of installment or monthly payments;
30 (e) make, model, year of production, and color of any available motor
31 vehicle;

32 (f) whether the motor vehicle has accessories specifically requested
33 by the consumer;

34 (g) fees;
35 (h) where applicable, finance charges and/or annual percentage rate;
36 (i) estimated delivery date of the automobile;
37 (j) statement of whether or not the manufacturer's warranty accompan-
38 ing the motor vehicle is the same warranty as that furnished to purchas-
39 ers of that make motor vehicle from an authorized dealer; and
40 (k) the identity of the new motor vehicle dealer offering a bid.

41 3. The contents of each bid by a motor vehicle dealer, solicited
42 pursuant to subdivision one of this section, shall be provided to each
43 consumer on whose behalf such bid has been solicited, regardless of the
44 particulars or content of any such bid.

45 4. The commissioner of motor vehicles shall adopt rules and regu-
46 lations necessary to effectuate the provisions of this section.

47 § 4. The opening paragraph and paragraph (e) of subdivision 1 and
48 subdivisions 3 and 4 of section 738 of the general business law, the
49 opening paragraph and paragraph (e) of subdivision 1 as amended and
50 subdivision 4 as added by chapter 28 of the laws of 2018 and subdivision
51 3 as amended by chapter 477 of the laws of 2017, are amended to read as
52 follows:

53 Every contract between a consumer and an automobile broker business
54 for the purchase of [~~an automobile~~] a motor vehicle, other than a new
55 motor vehicle, shall be in writing, shall be dated, shall contain the
56 street address of the automobile broker business and the consumer and

1 shall be signed by the consumer and by the automobile broker business.
2 Every contract shall comply with the requirements set forth in this
3 section and contain the following:

4 (e) A description of any other services and an itemization of the
5 charges for each. Such description shall include disclosure of the auto-
6 mobile dealer from which the automobile was purchased, as well as all
7 fees, commissions or other valuable [~~considerations paid by an automo-~~
8 ~~bile dealer~~] consideration owed by the consumer to the automobile broker
9 business for selling, arranging, assisting or effecting the sale of an
10 automobile as agent, broker, or intermediary between the consumer and
11 the automobile dealer.

12 3. Every contract between a consumer and an automobile broker business
13 for the service of arranging, assisting, facilitating or effecting the
14 purchase or lease of a new motor vehicle shall be in writing, shall be
15 dated, shall contain the street address of the automobile broker busi-
16 ness and the consumer, and shall be signed by the consumer and by the
17 automobile broker business. Every such contract shall comply with the
18 requirements set forth in this section and contain the following
19 provisions, which shall be printed in at least twelve-point bold type
20 and shall not be negated or superseded by any additional provision:

21 (a) A title, across the top of the document in at least sixteen-point
22 bold type, of "Contract for Automobile Brokering Services for a New
23 Motor Vehicle".

24 (b) A statement of whether a solicited new motor vehicle is or will be
25 manufactured in accordance with United States safety and environmental
26 specifications and is or will be certified by the manufacturer as such;
27 provided, if the new motor vehicle is not or will not be manufactured in
28 accordance with United States safety and environmental specifications,
29 and the consumer has retained the automobile broker business to arrange
30 for the modification of the new motor vehicle to meet such specifica-
31 tions, the name and street address of the modification facility and a
32 statement in immediate proximity to such information that the automobile
33 broker business assumes full financial responsibility that the new motor
34 vehicle will be properly modified to meet all United States safety and
35 environmental specifications.

36 (c) A statement that the consumer may cancel the contract for automo-
37 bile brokering services for a new motor vehicle for any reason within
38 three days of the execution of such contract and that the consumer has
39 the right to a full refund within ten business days following receipt of
40 the notice of cancellation.

41 (d) A statement that, if the requested new motor vehicle cannot be
42 procured by the automobile broker business within thirty days following
43 the date of execution of the contract for automobile brokering services
44 for a new motor vehicle, the consumer has the right to cancel the
45 contract and to receive a full refund within ten business days following
46 receipt of the request for a refund, unless the delay in delivery is
47 attributable to the consumer.

48 (e) A statement that the consumer shall be provided with the contents
49 of each bid received by the automobile broker business in response to
50 its solicitation on behalf of such consumer.

51 (f) The amount of the fee to be paid by the consumer to the automobile
52 broker business for the service of arranging, assisting, facilitating or
53 effecting the purchase or lease of a new motor vehicle.

54 (g) A statement that the single fee authorized by such contract for
55 automobile brokering services for a new motor vehicle is inclusive of
56 all charges incident to the purchasing, arranging, assisting, facilitat-

ing or effecting the purchase or lease of such new motor vehicle by the automobile broker business as agent, broker, or intermediary and that no other charge or expense whatsoever shall be taken, received, reserved or contracted for by the automobile broker business for such services.

4. The contract for automobile brokering services for a new motor vehicle shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" which shall be attached to the contract and easily detachable, and which shall contain in at least twelve-point type the following:

"Notice of Cancellation You may cancel this Contract for Automobile Brokering Services for a New Motor Vehicle, without any penalty or obligation, within three days from the date that a copy of an executed contract is received by you. You may also cancel this contract, without penalty or obligation, if the automobile broker business does not produce a bid meeting your specifications within thirty days of the date of execution of this contract.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to (name of automobile broker business) at (address of automobile broker business) not later than midnight of the third day, or, in the case of an automobile broker business not producing a bid meeting your specifications within thirty days, not later than midnight of the thirtieth day, following your receipt of a signed contract.

I hereby cancel this transaction.

(signature of consumer)

(date)"

5. An automobile broker business shall deliver to the consumer or mail to him or her at the address shown on ~~the~~ any contract required by this section, an executed copy thereof.

~~[4.-An]~~ 6. In addition to the brokering services agreement required by subdivision one of this section, an automobile broker business in any transaction involving the lease of a vehicle shall provide the retail lessee with a retail lease agreement as provided for in section three hundred thirty-seven of the personal property law. The automobile broker shall provide a written disclosure of the amount of any fee, commission or other consideration paid or expected to be paid by the lessor to the automobile broker business in connection with a transaction involving the lease of a vehicle. Such disclosure shall be signed by the retail lessee. The automobile broker business shall provide the retail lessee with a signed copy of such disclosure together with the retail lease agreement referenced herein. Nothing in this section shall be construed to permit the delivery of an executed retail lease agreement to a new motor vehicle by a person other than the prospective lessee.

§ 5. Subdivision 1 of section 740-a of the general business law, as amended by chapter 477 of the laws of 2017, is amended to read as follows:

1. Automobile broker businesses shall obtain and continue in effect a surety bond in an amount of ~~one~~ 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' 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

1 such customer deposit and the transfer of good title to the vehicle to
2 the customer.

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

5 § 741. Deceptive acts and frauds prohibited. 1. It is hereby declared
6 to be a deceptive trade practice and unlawful for an automobile broker
7 business to misrepresent directly or indirectly in its advertising,
8 promotional materials, sales presentation, or in any manner:

9 ~~[1-]~~ (a) The nature of the services to be performed and that a third
10 party will be paying for any such services;

11 ~~[2-]~~ (b) The time within which the services will be performed;

12 ~~[3-]~~ (c) The cost of the services to be performed; ~~[and~~

13 ~~4-]~~ (d) The ability of the automobile broker business to perform the
14 services; and

15 (e) That the automobile broker business is affiliated with any new
16 motor vehicle manufacturer, distributor, distributor branch and/or
17 factory branch including the use of any trademarks or copyrighted mate-
18 rial without the express, written consent of the owner of such material.

19 2. It shall be a fraudulent business practice for an automobile broker
20 business to refuse to disclose its registration number, issued either by
21 the department of motor vehicles pursuant to section four hundred
22 fifteen of the vehicle and traffic law or a municipality, to a motor
23 vehicle dealer. Furthermore, it shall be a fraudulent business practice
24 for an automobile broker business to make any misrepresentation to a
25 motor vehicle dealer or new motor vehicle dealer regarding the eligibil-
26 ity of any consumer for any discounts, reductions or any benefit
27 programs regarding the sale or lease of a motor vehicle.

28 3. It shall be a fraudulent business practice for an automobile broker
29 business to advertise new motor vehicles, through any print, electronic
30 or digital signal or medium, written or verbal statement or word,
31 design, device, sound or any combination of any such method or medium,
32 without disclosing that it is not a licensed motor vehicle dealer and is
33 not an authorized satellite location for any particular licensed motor
34 vehicle dealer.

35 4. It shall be a fraudulent business practice for an automobile broker
36 business to advertise through any print, electronic or digital signal or
37 medium, written or verbal statement or word, design, device, sound or
38 any combination of any such method or medium, that would lead a reason-
39 able consumer to conclude that the automobile broker business is a
40 licensed new motor vehicle dealer.

41 5. It shall be a fraudulent business practice for an automobile broker
42 business to maintain any website without including a text box with the
43 following statement in no less than eighteen-point boldface type on the
44 splash page: "(Broker name) is not a licensed new motor vehicle dealer
45 in the State of New York, nor is it an authorized affiliate of any
46 licensed new motor vehicle dealer in the State of New York".

47 6. It shall be a fraudulent business practice for an automobile broker
48 business to include any pricing or financing offers or promotions in any
49 advertisement, including any print, electronic or digital signal or
50 medium, written or verbal statement or word, design, device, sound or
51 any combination of any such method or medium.

52 7. It shall be a fraudulent business practice for an automobile broker
53 business to gain access to or use, or represent or advertise that it may
54 access or use, a portal, computer, or internet account owned by or
55 reserved for a new motor vehicle dealer to access or use one or more

finance sources that provide automotive-related loans, or purchases retail installment contracts or lease contracts for motor vehicles.

§ 7. 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 required by brokers. 1. An automobile broker business shall generate and provide a disclosure at the time such 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 expects to receive, if known, from [~~a dealer, lessor or~~] any [~~other~~] person or entity for any assistance the automobile broker business provides in effecting the purchase or lease 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 purchase or lease transaction[~~;(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 an automobile broker business by any motor vehicle dealer.

2. An automobile broker business shall generate and provide an additional disclosure to the consumer at the time such automobile broker business takes an order to search for a motor vehicle meeting the prospective buyer or lessee's specifications. Such additional disclosure shall state the following:

(a) that the automobile broker business 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 motor 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 for a consumer that seeks a new motor vehicle;

(b) that the automobile broker business shall provide to the consumer all contents of each bid made by a motor vehicle dealer in response to the solicitation of the automobile broker business; and

(c) that the automobile broker business has a duty to act for the benefit of the prospective buyer or lessee.

3. Each disclosure required by this section to be made to a consumer shall be acknowledged in writing by each consumer.

4. Prior to the execution of any purchase contract or lease for an automobile, an automobile broker business shall provide each consumer with all disclosures required to be made by a dealer.

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

§ 741-c. Private information security. 1. An automobile broker business shall report annually to the department of motor vehicles its compliance with sections three hundred ninety-nine-cc, three hundred ninety-nine-dd, three hundred ninety-nine-ddd, three hundred ninety-nine-h, three hundred ninety-nine-oo, three hundred ninety-nine-p, three hundred ninety-nine-pp, and eight hundred ninety-nine-bb of this chapter. For the purposes of subdivision two of section eight hundred nine-

1 ty-nine-bb of this chapter, an automobile broker business shall not be
2 considered a small business as that term is defined in that section.

3 2. In addition to the requirements of subdivision one of this section,
4 an automobile broker business shall:

5 (a) keep and maintain all consumer records containing private informa-
6 tion in a safe place that is not accessible to persons not employed by
7 the automobile broker business, including by keeping and maintaining a
8 clear and permanent physical barrier from other businesses that share or
9 neighbor its place of business;

10 (b) have a mailbox at such place of business dedicated only to the
11 automobile broker business; and

12 (c) have a method of locking security items, including a locking cabi-
13 net or safe.

14 3. No transaction for the purchase or lease of a previously unregis-
15 tered motor vehicle that was arranged, assisted, facilitated or effected
16 by an automobile broker business shall be valid unless the consumer
17 personally delivers an executed purchase contract or lease, and, where
18 applicable, financing agreement, to the place of business of the dealer
19 from which such vehicle will be purchased or leased and such dealer
20 verifies the identity of such consumer.

21 § 9. Section 743 of the general business law, as amended by chapter
22 372 of the laws of 2016, is amended to read as follows:

23 § 743. Enforcement [~~by~~]. 1. By attorney general. In addition to the
24 other remedies provided, whenever there shall be a violation of this
25 article, application may be made by the attorney general in the name of
26 the people of the state of New York to a court or justice having juris-
27 diction by a special proceeding to issue an injunction, and upon notice
28 to the defendant of not less than five days, to enjoin and restrain the
29 continuance of such violations; and if it shall appear to the satisfac-
30 tion of the court or justice that the defendant has, in fact, violated
31 this article, an injunction may be issued by such court or justice,
32 enjoining and restraining any further violation, without requiring proof
33 that any person has, in fact, been injured or damaged thereby. In any
34 such proceeding, the court may make allowances to the attorney general
35 as provided in paragraph six of subdivision (a) of section eighty-three
36 hundred three of the civil practice law and rules, and direct restitu-
37 tion. Whenever the court shall determine that a violation of this arti-
38 cle has occurred, the court shall impose a civil penalty of not less
39 than [~~one~~] four thousand dollars and not more than [~~three~~] ten thousand
40 dollars for each violation. In connection with any such proposed appli-
41 cation, the attorney general is authorized to take proof and make a
42 determination of the relevant facts and to issue subpoenas in accordance
43 with the civil practice law and rules.

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

49 (b) The provisions of this article may be enforced in the same manner
50 as set forth in subdivision one of this section by the director of a
51 municipal consumer affairs office or a business integrity commission, or
52 by the town attorney, city corporation counsel, or other lawfully desig-
53 nated enforcement officer of a municipality or local government, and all
54 monies collected thereunder shall be retained by such municipality or
55 local government, provided that no local government may prevent enforce-
56 ment of its provisions by appropriate state officials.

1 3. By private party. Any persons that are or may be injured by any
2 violation of this article may bring an action in his or her own name
3 against an automobile broker business to enjoin such unlawful act or
4 practice, an action to recover his or her damages and statutory damages
5 of not less than four thousand dollars and not more than ten thousand
6 dollars for each violation, or both such actions. Injury shall include,
7 but not be limited to, lost sales on account of deceptive or unfair
8 advertising and depriving a new motor vehicle dealer located closest to
9 a lessee or purchaser the opportunity to bid on such lease or purchase
10 as entitled by this article. Damages shall include, but not be limited
11 to, lost sales and the value of incentive payments, bonuses, holdbacks
12 or similar payments that would have been realized had a lessee or
13 purchaser purchased or leased such vehicle from the new motor vehicle
14 dealer in closest proximity to such lessee or purchaser but for the
15 actions of a person who knowingly aided the violation of the provisions
16 of this article. Nothing in this section shall require a franchisor,
17 manufacturer, or distributor to grant a new motor vehicle dealer a bene-
18 fit under an incentive, bonus, holdback or similar payment that the new
19 motor vehicle dealer did not earn or for which the new motor vehicle
20 dealer did not complete or qualify. Such actions may be brought regard-
21 less of whether or not the underlying violation is consumer-oriented or
22 has a public impact. Given the remedial nature of this subdivision,
23 standing to bring an action under this subdivision shall be liberally
24 construed and shall be available to the fullest extent otherwise permit-
25 ted by law. The court may, in its discretion, award treble damages if
26 the court finds the defendant willfully or knowingly violated this arti-
27 cle. The court shall award reasonable attorney's fees and costs to a
28 prevailing plaintiff.

29 § 10. Paragraph a of subdivision 1 of section 415 of the vehicle and
30 traffic law, as amended by chapter 554 of the laws of 2015, is amended
31 to read as follows:

32 a. "Dealer" means a person engaged in the business of buying, selling
33 or dealing in motor vehicles, motorcycles or trailers, other than mobile
34 homes or manufactured homes, at retail or wholesale; except, however,
35 trailers with an unladen weight of less than one thousand pounds. For
36 the purposes of this section, a "mobile home" or "manufactured home"
37 means a mobile home or manufactured home as defined in section one
38 hundred twenty-two-c of this chapter. Any person who sells, or offers
39 for sale or lease more than five motor vehicles, motorcycles or trailers
40 in any calendar year or who displays or permits the display of three or
41 more motor vehicles, motorcycles or trailers for sale at any one time or
42 within any one calendar month upon premises owned or controlled by him
43 or her, if such vehicles were purchased, acquired or otherwise obtained
44 by such person for the purpose of resale, will be regarded as a dealer.
45 For the purposes of this section, "offers for sale or lease" shall
46 include, but not be limited to, the act of drawing the public's atten-
47 tion to, or the presentation or display of any motor vehicle, including
48 the posting of images of any such vehicle, together with a suggested
49 retail price, lease cost or financing rate for such vehicle and an offer
50 to provide, the provision of, or a representation that such person may
51 provide a service of arranging, assisting, facilitating or effecting the
52 purchase or lease of such new motor vehicle, except this meaning shall
53 not apply to any activity of a cooperative or other advertising program
54 or fund as described in any franchise, as such term is defined by subdi-
55 vision six of section four hundred sixty-two of this title, or the
56 display of aggregated information and images by a national service that

1 otherwise does not have contact with consumers. Except as otherwise
2 provided in subdivisions three, five, six-b, and seven of this section,
3 the term "dealer" shall include a "new motor vehicle dealer" as defined
4 by paragraph f of this subdivision and a "qualified dealer" as defined
5 in paragraph g of this subdivision.

6 § 11. Subdivision 3 of section 415 of the vehicle and traffic law is
7 amended by adding a new paragraph d to read as follows:

8 d. It is hereby declared to be a fraudulent practice, for the purposes
9 of paragraph c of subdivision nine of this section, for a dealer to use
10 any subsidiary corporation, affiliated corporation, or any other
11 controlled corporation, partnership, association, business or person to
12 accomplish what would otherwise be unlawful conduct under this article
13 or article thirty-five-b of the general business law, including request-
14 ing that an automobile broker business represent such dealer in generat-
15 ing a sale or lease or making payment to, either directly or indirectly,
16 an automobile broker business.

17 § 12. Subdivision 3-a and paragraph b-3 of subdivision 5 of section
18 415 of the vehicle and traffic law, as added by chapter 477 of the laws
19 of 2017, are amended to read as follows:

20 3-a. Automobile broker business registration. a. No person shall
21 engage in the automobile broker business or represent or advertise that
22 he or she is engaged or intends to engage in the automobile broker busi-
23 ness in this state, unless there shall have been issued to him or her a
24 certificate of registration as an automobile broker business by the
25 commissioner under this section pursuant to an application for registra-
26 tion submitted pursuant to subdivision five of this section. Such regis-
27 tration shall be effective for a period not exceeding two years. At the
28 discretion of the commissioner a registration may be renewed for a peri-
29 od of up to two years upon application therefor, in such form as the
30 commissioner may prescribe, and a showing of proof of satisfaction of
31 the requirements of section seven hundred forty-a of the general busi-
32 ness law, and upon payment of the fee as herein prescribed.

33 b. The commissioner shall not issue or renew a certificate of regis-
34 tration authorized by this subdivision to any dealer, franchisee, fran-
35 chisor, manufacturer, distributor, distributor branch or factory branch,
36 as such terms are defined in section four hundred sixty-two of this
37 title, or to any subsidiary, affiliate, employee or controlled person or
38 entity thereof.

39 c. As a condition of any certificate of registration issued or renewed
40 pursuant to this subdivision, an automobile broker business shall have,
41 and continuously maintain, a place of business in this state for which
42 it shall keep and maintain evidence that all necessary approvals,
43 licenses and/or permits have been obtained from all local governing
44 bodies to operate such place of business with customer or client traf-
45 fic. No more than one automobile broker business shall operate at any
46 single location and no automobile broker business shall operate at the
47 same location as a new motor vehicle dealer.

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

52 "(Name of registered automobile broker) is not a franchised new motor
53 vehicle dealer. We are not authorized or approved by a manufacturer or
54 distributor to sell a new motor vehicle or perform recall or original
55 factory warranty work. If you order a search for a new motor vehicle
56 from this broker, we must make a bona fide effort to solicit bids from

1 at least three unaffiliated new motor vehicle dealers for a new motor
2 vehicle on your behalf, including from your local dealer."

3 e. As a condition of any certificate of registration issued or renewed
4 pursuant to this subdivision, and before performing any broker services
5 related to a new motor vehicle, an automobile broker business shall
6 attest in writing to each consumer, that the broker: (i) is not a fran-
7 chised new motor vehicle dealer; (ii) is not authorized or approved by a
8 manufacturer or distributor to sell a new motor vehicle or perform
9 recall or original factory warranty work; and (iii) that the broker
10 shall make a bona fide effort to solicit bids from at least three unaf-
11 filiated new motor vehicle dealers that sell a new motor vehicle or any
12 line or make desired by such consumer, including from the consumer's
13 local dealer.

14 f. It is hereby declared to be a fraudulent practice, for the purposes
15 of paragraph c of subdivision nine of this section, for an automobile
16 broker business to draw the public's attention to, or present or display
17 any new motor vehicle, including by posting images of any such vehicle,
18 together with a suggested retail price, lease cost or financing rate for
19 such vehicle and an offer to provide, the provision of, or a represen-
20 tation that such person may provide a service of arranging, assisting,
21 facilitating or effecting the purchase or lease of such new motor vehi-
22 cle.

23 g. Nothing in this subdivision shall be construed to prohibit a fran-
24 chisor, manufacturer, or distributor from sponsoring activities intended
25 to generate leads toward the sale or lease of a new motor vehicle by a
26 franchisee.

27 b-3. In the case of an application for registration as an automobile
28 broker business, either for initial registration or renewal thereof, the
29 name and address of the surety company which will issue the bond
30 required by subdivision one of section seven hundred forty-a of the
31 general business law, a copy of such bond certified by the secretary of
32 state or one of his or her agents, and a statement indicating any inter-
33 est in the applicant's business entity by a person or entity described
34 in paragraph f of subdivision one or paragraph f of subdivision seven of
35 this section, or any employee or person, controlling person or entity
36 thereof. If the bond is to be issued by an authorized agent of the sure-
37 ty company licensed by the state, then the name and address of that
38 agent may be provided in lieu of the information concerning the surety
39 company.

40 § 13. Section 415 of the vehicle and traffic law is amended by adding
41 two new subdivisions 21 and 22 to read as follows:

42 21. Penalties and rights of action for failure to obtain a certificate
43 of registration as an automobile broker pursuant to subdivision three-a
44 and paragraph b-3 of subdivision five of this section. In addition to
45 any other action authorized by law, the commissioner, or any person
46 designated by him or her, may proceed against a party who has operated
47 as an automobile broker without certificate of registration in accord-
48 ance with the provisions of this article, in any one or more proceedings
49 and by order to enjoin such unlawful acts or practices and requiring the
50 offending party to pay the people of this state a penalty in a sum not
51 less than four thousand dollars and not more than ten thousand dollars
52 for each violation found to have been committed. Civil penalties
53 assessed under this subdivision shall be paid to the commissioner for
54 deposit into the state treasury, and unpaid civil penalties may be
55 recovered by the commissioner in a civil action in the name of the
56 commissioner. For the purposes of this subdivision, a "violation" shall

1 mean each vehicle sold or leased to a consumer for which the party that
2 failed to obtain certification as an automobile broker has served as an
3 automobile broker.

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

14 b. Automobile broker businesses shall maintain a permanently bound
15 book in which shall be recorded all completed orders to search for a
16 previously unregistered automobile within any preceding six-year period.
17 Such broker shall also record in such book the date of such order, the
18 name and address of the person or entity ordering such search, the auto-
19 mobile specifications provided by such prospective buyer or lessee and
20 the name and address of the dealers solicited for a quote or offer on
21 behalf of such prospective buyer or lessee.

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

25 d. As an alternative to a bound book, an automobile broker may use a
26 computer and software approved by the department to maintain the records
27 required to be kept by this section, provided all information required
28 by paragraphs a and b of this section are recorded and the records
29 conform to such additional requirements as determined by the commission-
30 er.

31 § 14. Subdivision 5 of section 337 of the personal property law is
32 amended by adding a new paragraph (m) and such section is amended by
33 adding a new subdivision 4-a to read as follows:

34 4-a. Any credit application, or other request for a determination of
35 creditworthiness, in furtherance of a retail lease agreement for a new
36 motor vehicle, that is submitted to a lessor or anticipated assignee
37 that is a manufacturer, as such term is defined in subdivision nine of
38 section four hundred sixty-two of the vehicle and traffic law, a person
39 under contract with a manufacturer to serve as holder, or a captive
40 finance source, as such term is defined by subdivision sixteen of
41 section four hundred sixty-two of the vehicle and traffic law, shall
42 include the name, address, and department of motor vehicles registration
43 number of the automobile broker business that provided the service of
44 arranging, assisting, facilitating or effecting such agreement as agent,
45 broker, or intermediary for such retail lessee, and the amount of the
46 fee paid by the consumer to the automobile broker business, as such term
47 is used in article thirty-five-B of the general business law, for the
48 service of arranging, assisting, facilitating or effecting the lease of
49 such new motor vehicle.

50 (m) In the case of a retail lease agreement for a new motor vehicle,
51 as such term is defined in subdivision eleven of section four hundred
52 sixty-two of the vehicle and traffic law, where the lessor or antic-
53 ipated assignee is a manufacturer, as such term is defined in subdivi-
54 sion nine of section four hundred sixty-two of the vehicle and traffic
55 law, a person under contract with the manufacturer of such leased new
56 motor vehicle to serve as holder, or a captive finance source, as such

1 term is defined by subdivision sixteen of section four hundred sixty-two
2 of the vehicle and traffic law, the name, address, and department of
3 motor vehicles registration number of the automobile broker business
4 that provided the service of arranging, assisting, facilitating or
5 effecting such agreement as agent, broker, or intermediary for such
6 retail lessee, and the amount of the fee paid by the consumer to the
7 automobile broker business, as such term is used in article
8 thirty-five-B of the general business law, for the service of arranging,
9 assisting, facilitating or effecting the lease of such new motor vehi-
10 cle.

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

17 § 16. This act shall take effect immediately; provided that all auto-
18 mobile brokers registered on the effective date of this act shall have
19 ninety days to come into compliance with the provisions of this act.