

STATE OF NEW YORK

4364

2019-2020 Regular Sessions

IN SENATE

March 11, 2019

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

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:

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

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

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

8 4. "New automobile broker business" means any person who, for a fee,
9 commission or other valuable consideration, regardless of whether such
10 fee, commission or consideration is paid directly by a consumer, offers
11 to provide, provides or represents that he or she will provide a service
12 of purchasing, arranging, assisting, facilitating or effecting the
13 purchase or lease of a previously unregistered automobile as agent,
14 broker, or intermediary for a consumer. "New automobile broker business"
15 does not include any person registered as a new vehicle dealer for the
16 new automobile brand or brands for which such services are provided,
17 pursuant to article sixteen of the vehicle and traffic law nor any bona
18 fide employee, as opposed to an independent contractor, of such a regis-
19 tered dealer while acting for such dealer. For the purposes hereof, any
20 employee who, pursuant to department of labor guidelines, rules and
21 regulations, would be an independent contractor for a registered dealer
22 shall not be deemed a bona fide employee.

23 § 3. Subdivision 3-a and paragraph b-3 of subdivision 5 of section 415
24 of the vehicle and traffic law, as added by chapter 477 of the laws of
25 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

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

10 § 9. Section 740-a of the general business law, as added by chapter
11 579 of the laws of 2011 and subdivision 1 as amended by chapter 477 of
12 the laws of 2017, is amended to read as follows:

13 § 740-a. Automobile broker business and new automobile broker business
14 surety bond. 1. Automobile broker businesses and new automobile broker
15 businesses shall obtain and continue in effect a surety bond in an
16 amount of one hundred thousand dollars executed by a surety company
17 authorized to transact business in the state by the department of finan-
18 cial services of the state or its successor. The bonds shall be approved
19 as to form by the secretary of state and shall be conditioned on the
20 automobile broker business' or new automobile broker business' payment
21 of all valid bank drafts, including checks, drawn for the purchase of
22 motor vehicles and safekeeping of all customer deposits related to the
23 sale of a motor vehicle between the time of receipt of such customer
24 deposit and the transfer of good title to the vehicle to the customer.

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

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

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

43 § 741. Deceptive acts prohibited. It is hereby declared to be a decep-
44 tive trade practice and unlawful for an automobile broker business or
45 new automobile broker business to misrepresent directly or indirectly in
46 its advertising, promotional materials, sales presentation, or in any
47 manner:

- 48 1. The nature of the services to be performed;
- 49 2. The time within which the services will be performed;
- 50 3. The cost of the services to be performed; and
- 51 4. The ability of the automobile broker business or new automobile
52 broker business to perform the services.

53 § 11. Section 741-a of the general business law, as amended by chapter
54 477 of the laws of 2017, is amended to read as follows:

55 § 741-a. Advertising. Automobile broker businesses and new automobile
56 broker businesses shall clearly and conspicuously disclose the following

1 in all advertisements in any medium, and in any print advertisement such
2 disclosures shall not appear in any footnotes and shall be situated in
3 the top half of any such advertisement in an easily readable typeface:

4 (a) That the automobile broker business or new automobile broker busi-
5 ness is not a registered new motor vehicle dealer but is a registered
6 automobile broker business or new automobile broker business as defined
7 in section four hundred fifteen of the vehicle and traffic law;

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

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

15 (d) That no warranty repair services will be provided by the automo-
16 bile broker business or new automobile broker business.

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

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

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

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