

STATE OF NEW YORK

4364--A

2019-2020 Regular Sessions

IN SENATE

March 11, 2019

Introduced by Sens. THOMAS, BROOKS, COMRIE, GAUGHRAN, GOUNARDES, KAMINSKY, KAPLAN, LIU, MAY, MYRIE, PERSAUD, SALAZAR, SAVINO, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- committee discharged, bill amended, 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:

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; through a new
14 motor vehicle dealer, as agent, broker, or intermediary for a consumer.
15 "New automobile broker business" does not include any person registered
16 as a new vehicle dealer for the new automobile brand or brands for which
17 such services are provided, pursuant to article sixteen of the vehicle
18 and traffic law nor any bona fide employee of such a registered dealer
19 while acting for such dealer.

20 § 3. Subdivision 3-a and paragraph b-3 of subdivision 5 of section 415
21 of the vehicle and traffic law, as added by chapter 477 of the laws of
22 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. The commissioner shall not issue any certificate of registration authorized by this section to any 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.

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 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 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 and/or distributor permitting the applicant to serve as an approved registered broker for the sale or lease, through a new motor vehicle dealer, of a new motor vehicle of the line makes which the applicant proposes to broker from the geographic location described in the application. The geographic location included in the application shall be subject to the provisions of article seventeen-A of this title regarding franchised automobile dealers.

§ 5. 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 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.

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.

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

1 § 741-c. Prohibitions related to private information. No person regis-
2 tered under this article shall request, handle, store or transmit the
3 private information, as such term is defined in paragraph (b) of subdi-
4 vision one of section eight hundred ninety-nine-aa of this chapter, of
5 any consumer.

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

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

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

16 Every contract between a consumer and an automobile broker business,
17 which for the purposes of this section shall include new automobile
18 broker businesses, for the purchase of an automobile shall be in writ-
19 ing, shall be dated, shall contain the street address of the automobile
20 broker business and the consumer and shall be signed by the consumer and
21 by the automobile broker business. Every contract shall comply with the
22 requirements set forth in this section and contain the following:

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

25 § 740. Escrow required for advance payments. All monies paid by a
26 consumer to an automobile broker business or a new automobile broker
27 business in connection with a transaction covered by this article shall
28 be trust funds in the possession of such automobile broker business or
29 new automobile broker business and shall be deposited by it within five
30 days after receipt thereof, in an account in a banking organization
31 within the state. The automobile broker business or new automobile
32 broker business shall thereupon notify in writing the consumer, giving
33 the name and address of the banking organization and the amount deposit-
34 ed. The monies shall be held on deposit until fully applied to the
35 contract price at the time the automobile is delivered to the consumer,
36 unless sooner repaid in accordance with the provisions of this article.

37 § 10. Section 740-a of the general business law, as added by chapter
38 579 of the laws of 2011 and subdivision 1 as amended by chapter 477 of
39 the laws of 2017, is amended to read as follows:

40 § 740-a. Automobile broker business and new automobile broker business
41 surety bond. 1. Automobile broker businesses and new automobile broker
42 businesses shall obtain and continue in effect a surety bond in an
43 amount of one hundred thousand dollars executed by a surety company
44 authorized to transact business in the state by the department of finan-
45 cial services of the state or its successor. The bonds shall be approved
46 as to form by the secretary of state and shall be conditioned on the
47 automobile broker business' or new automobile broker business' payment
48 of all valid bank drafts, including checks, drawn for the purchase of
49 motor vehicles and safekeeping of all customer deposits related to the
50 sale of a motor vehicle between the time of receipt of such customer
51 deposit and the transfer of good title to the vehicle to the customer.

52 2. Recovery against a bond may be made by a person, including the
53 state, who obtains a judgment against the automobile broker business or
54 new automobile broker business for an act or omission on which the bond
55 is conditioned if the act or omission occurred during the term of the
56 bond. The total liability imposed on the surety under this section for

1 all breaches of the bond condition is limited to the face amount of the
2 bond. Such liability may include, but is not limited to, the amount of
3 the valid bank drafts, including checks, drawn by the automobile broker
4 business or new automobile broker business for the purchase of motor
5 vehicles. In no event shall the surety on a bond be liable for total
6 claims in excess of the bond amount, regardless of the number or nature
7 of claims made against the bond or the number of years the bond remained
8 in force.

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

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

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

19 1. The nature of the services to be performed and in the case of a new
20 automobile broker that a third party will be paying for any such
21 services;

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

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

24 4. The ability of the automobile broker business or new automobile
25 broker business to perform the services; and

26 5. That the automobile broker business or new automobile broker busi-
27 ness is affiliated with any automobile manufacturer and/or distributor,
28 provided, however, that a new automobile broker business may state the
29 line makes for which it holds permission pursuant to section four
30 hundred fifteen of the vehicle and traffic law.

31 § 12. Section 741-a of the general business law, as amended by chapter
32 477 of the laws of 2017, is amended to read as follows:

33 § 741-a. Advertising. Automobile broker businesses and new automobile
34 broker businesses shall clearly and conspicuously disclose the following
35 in all advertisements in any medium, and in any print advertisement such
36 disclosures shall not appear in any footnotes and shall be situated in
37 the top half of any such advertisement in an easily readable typeface:

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

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

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

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

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

53 21. Penalties and rights of action for failure to obtain a certificate
54 of registration as a new automobile broker pursuant to subdivision
55 three-a and paragraph b-3 of subdivision five of this section. a. The
56 commissioner, or any person designated by him or her, may proceed

1 against a party who has operated as a new automobile broker without
2 certificate of registration in accordance with the provisions of this
3 article, in any one or more proceedings and by order require the offend-
4 ing party to pay the people of this state a penalty in a sum not to
5 exceed two thousand dollars for each violation found to have been
6 committed. Civil penalties assessed under this subdivision shall be paid
7 to the commissioner for deposit into the state treasury, and unpaid
8 civil penalties may be recovered by the commissioner in a civil action
9 in the name of the commissioner. For the purposes of this subdivision, a
10 "violation" shall mean each vehicle sold or leased to a consumer for
11 which the party that failed to obtain certification as a new automobile
12 broker has served as a new automobile broker.

13 b. In addition to any civil action brought by the commissioner or any
14 person appointed by him, any persons injured by any violation of subdivi-
15 sion three-a and paragraph b-3 of subdivision five of this section,
16 shall be entitled to sue for and have injunctive relief and damages
17 against, any party in violation of subdivision three-a and paragraph b-3
18 of subdivision five of this section in any court of the state having
19 jurisdiction over the parties. In the case of a new motor vehicle deal-
20 er, injury shall include the sale or lease of a new motor vehicle to a
21 person residing within the relevant market area of such dealer. The term
22 "relevant market area" shall have the same meaning as in subdivision
23 fifteen of section four hundred sixty-two of this title. In any such
24 judicial action or proceeding, the court may award reasonable attorney's
25 fees and costs.

26 § 14. Subdivision 2 of section 463 of the vehicle and traffic law is
27 amended by adding three new paragraphs (ll), (mm) and (nn) to read as
28 follows:

29 (ll) To issue written confirmation to a new automobile broker business
30 permitting such business to serve as an approved registered broker for
31 the sale or lease, through a new motor vehicle dealer, of such manufac-
32 turer's new motor vehicles, unless the manufacturer provides notice
33 pursuant to the terms of this paragraph. All dealers that have a rele-
34 vant market area that encompasses the proposed site shall be entitled to
35 written notice, via certified mail return receipt requested, informing
36 them of the proposed approval of a new automobile broker business. Any
37 new motor vehicle dealer may institute an adjudicatory proceeding or
38 action as provided in section four hundred sixty-nine of this article to
39 protest the issuance of such written confirmation to a new automobile
40 broker business permitting such business to serve as an approved regis-
41 tered broker following receipt of such notice, or following the end of
42 any appeal procedure provided by the manufacturer. In any adjudicatory
43 proceeding or action brought by the dealer, the manufacturer shall have
44 the burden of proving that there exists good cause to permit such new
45 automobile broker business to serve as an approved registered broker and
46 that such permission will not harm the dealer within the relevant market
47 area. Institution of an action pursuant to this paragraph shall serve to
48 stay, without bond, the effectiveness of the written confirmation of
49 such manufacturer until a final judgment has been rendered in a proceed-
50 ing or action as provided in section four hundred sixty-nine of this
51 article. A manufacturer shall not issue written confirmation permitting
52 a new automobile broker business to serve as an approved registered
53 broker to any person or entity which has been cited for any violation of
54 article thirty-five-B of the general business law, or which has a busi-
55 ness relationship with any new franchised motor vehicle dealer not
56 licensed to operate as a new motor vehicle dealer within the state, or

1 does not have a relevant market area that includes any portion of the
2 state. For the purposes of this paragraph "business relationship" shall
3 mean activity that includes paying a new automobile broker business by a
4 new motor vehicle dealer not licensed to operate as a new motor vehicle
5 dealer within the state, or does not have a relevant market area that
6 includes any portion of the state in connection with the sale or leader
7 of a new motor vehicle.

8 (mm) To issue written confirmation to a new automobile broker business
9 that permits such business to serve as an approved registered broker for
10 a period exceeding two years.

11 (nn) For incentive payments, bonuses, holdbacks or similar payments
12 related to the sale or lease of a new motor vehicle that has been
13 arranged, assisted, facilitated or effected in a particular relevant
14 market area, to deny a franchised motor vehicle dealer located in such
15 relevant market area a payment of equal value as has been awarded to
16 another franchised motor vehicle dealer. Nothing in this paragraph shall
17 be construed to authorize any incentive payment, bonus, holdback or
18 similar payment to any automobile broker business or new automobile
19 broker business, as such terms are defined in section seven hundred
20 thirty-six of the general business law.

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

23 8. A new vehicle manufacturer shall require its franchisees to main-
24 tain a record of all sales or leases arranged, assisted, facilitated or
25 effected by each new automobile broker business to which it has provided
26 written confirmation permitting it to serve as a new automobile broker
27 business, as such term is defined in section seven hundred thirty-six of
28 the general business law. New vehicle manufacturers shall further main-
29 tain a record of all incentives paid to any franchisee attributable to
30 any sale or lease that has been arranged, assisted, facilitated or
31 effected by a new automobile broker business. For sales or leases
32 arranged, assisted, facilitated or effected by any new automobile broker
33 business operating or based in a particular relevant market area, a new
34 vehicle manufacturer shall furnish a record of incentives paid to any
35 franchisee attributable to any such sales or leases to the franchisee
36 operating or based within any such relevant market area.

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