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Introduced by M. of A. CARROLL, ABBATE, STIRPE, REYES, TAYLOR, CYMBROW-ITZ, DICKENS, ENGLEBRIGHT, D. ROSENTHAL, GALEF, GOTTFRIED, DeSTEFANO, RAMOS, MIKULIN, SAYEGH, SMITH, WILLIAMS, COOK, ABINANTI, QUART, SEAWRIGHT, REILLY, B. MILLER, ROZIC, FERNANDEZ, EPSTEIN, CRUZ, STECK, PHEFFER AMATO, PICHARDO, RA, BENEDETTO, BYRNE, JACOBSON, HYNDMAN, PERRY, THIELE, SOLAGES, LAVINE, STERN, GRIFFIN, JONES, BUTTENSCHON, BRAUNSTEIN, FALL, FRONTUS, PAULIN, L. ROSENTHAL, WALLACE, DILAN, AUBRY, JEAN-PIERRE, DARLING, WALKER, ANDERSON, JACKSON -- Multi-Sponsored by -- M. of A. DE LA ROSA, FITZPATRICK, HEVESI, 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

AN ACT to amend the general business law and the vehicle and traffic 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 to read as
3 follows:
4 1. "Automobile broker business" means any person who, for a fee,
5 commission or other valuable consideration, regardless of whether such
6 fee, commission, or consideration is paid directly by a consumer, offers
7 to provide, provides, or represents that he or she will provide a
8 service of purchasing, arranging, assisting, facilitating or effecting
9 the purchase or lease of an automobile as agent, broker, or intermediary
10 for a consumer. "Automobile broker business" does not include any person
11 registered as a new motor vehicle dealer or qualified dealer pursuant to
12 article sixteen of the vehicle and traffic law, any person registered
13 under section four hundred fifteen-a of the vehicle and traffic law,

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

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1 only when operating under activity covered by such registration, an
2 automobile auctioneer, only when operating in the manner described in
3 section twenty-three of this chapter, nor any bona fide employee of a
4 registered new motor vehicle dealer or qualified dealer while acting for
5 such new motor vehicle dealer or qualified dealer, or any person who
6 sells, offers for sale or lease or acts as agent, broker or intermediary
7 in effecting the purchase or lease of three or fewer automobiles in any
8 calendar year, any national service which aggregates information for
9 consumers, but does not otherwise have contact with consumers, [~~or~~] any
10 motor vehicle franchisor, manufacturer, or distributor, distributor
11 branch or factory branch registered under article sixteen of the vehicle
12 and traffic law.

13 § 2. Section 736-a of the general business law, as added by chapter
14 477 of the laws of 2017, is amended to read as follows:

15 § 736-a. Registration required. 1. (a) No person shall engage in busi-
16 ness as an automobile broker business, as defined in section seven
17 hundred thirty-six of this article, without first having been issued a
18 certificate of registration for an automobile broker business pursuant
19 to paragraph c of subdivision seven of section four hundred fifteen of
20 the vehicle and traffic law. A certificate of registration for an auto-
21 mobile broker business shall be valid for a period of two years.

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

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

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

36 3. Any person that sells or leases five or more vehicles in a calendar
37 year to or through one or more automobile broker business shall be
38 deemed to be dealing in motor vehicles as that term is used in paragraph
39 a of subdivision one of section four hundred fifteen of the vehicle and
40 traffic law.

41 4. The commissioner of motor vehicles shall adopt rules and regu-
42 lations necessary to effectuate the provisions of this section, includ-
43 ing regulations that require the disclosure of the name, address, and
44 registration number of an automobile broker business that provided the
45 service of arranging, assisting, facilitating or effecting the purchase
46 or lease of any new motor vehicle, and the fee collected by the broker
47 from the consumer for providing such service. Such rules and regulations
48 shall require that such information of the automobile broker business
49 and its fee for service be printed on any invoice, bill of sale, or
50 buyer's order, and on any application for registration or title submit-
51 ted by any dealer to the department of motor vehicles on behalf of the
52 consumer related to such purchased or leased motor vehicle.

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

55 § 737-a. Bona fide bid soliciting required. 1. On behalf of each
56 consumer executing a contract that conforms to the requirements of

1 subdivision three of section seven hundred thirty-eight of this article,
2 an automobile broker business shall solicit a bid, from at least new
3 motor vehicle dealers of the same line-make, that meets the specifica-
4 tions of such prospective buyer or lessee, including from the new motor
5 vehicle dealer located in closest proximity to the home address of a
6 prospective buyer or lessee of a new motor vehicle or, in the case of an
7 entity, the place of doing business of such prospective buyer or lessee
8 of a new motor vehicle. Whenever an automobile broker business may
9 choose bid specifications on behalf of a consumer, such automobile
10 broker business shall solicit a bid matching such specifications from at
11 least three new motor vehicle dealers of the same line-make, including
12 from the new motor vehicle dealer located in closest proximity to the
13 home address of a prospective buyer or lessee of a new motor vehicle or,
14 in the case of an entity, the place of doing business of such prospec-
15 tive buyer or lessee of a new motor vehicle.

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

- 19 (a) price or lease costs;
20 (b) down or similar payment;
21 (c) number of payments;
22 (d) amount of installment or monthly payments;
23 (e) make, model, year of production, and color of any available motor
24 vehicle;
25 (f) whether the motor vehicle has accessories specifically requested
26 by the consumer;
27 (g) fees;
28 (h) where applicable, finance charges and/or annual percentage rate;
29 (i) estimated delivery date of the automobile;
30 (j) statement of whether or not the manufacturer's warranty accompany-
31 ing the motor vehicle is the same warranty as that furnished to purchas-
32 ers of the same motor vehicle by an authorized dealer; and
33 (k) the identity of the new motor vehicle dealer offering a bid.

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

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

40 § 4. The opening paragraph and paragraph (e) of subdivision 1 and
41 subdivisions 3 and 4 of section 738 of the general business law, the
42 opening paragraph and paragraph (e) of subdivision 1 as amended and
43 subdivision 4 as added by chapter 28 of the laws of 2018 and subdivision
44 3 as amended by chapter 477 of the laws of 2017, are amended to read as
45 follows:

46 Every contract between a consumer and an automobile broker business
47 for the purchase of [~~an automobile~~] a motor vehicle, other than a new
48 motor vehicle, shall be in writing, shall be dated, shall contain the
49 street address of the automobile broker business and the consumer and
50 shall be signed by the consumer and by the automobile broker business.
51 Every contract shall comply with the requirements set forth in this
52 section and contain the following:

- 53 (e) A description of any other services and an itemization of the
54 charges for each. Such description shall include disclosure of the auto-
55 mobile dealer from which the automobile was purchased, as well as all
56 fees, commissions or other valuable [~~considerations paid by an automo-~~

1 ~~file dealer~~] consideration owed by the consumer to the automobile broker
2 business for selling, arranging, assisting or effecting the sale of an
3 automobile as agent, broker, or intermediary between the consumer and
4 the automobile dealer.

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

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

17 (b) A statement of whether a solicited new motor vehicle is or will be
18 manufactured in accordance with United States specifications and is or
19 will be certified by the manufacturer as such if the new motor vehicle
20 is not or will not be manufactured in accordance with United States
21 safety and environmental specifications, and the consumer has retained
22 the automobile broker business to arrange for the modification of the
23 new motor vehicle to meet such specifications, the name and street
24 address of the modification facility and a statement in immediate prox-
25 imity to such information that the automobile broker business assumes
26 full financial responsibility that the new motor vehicle will be proper-
27 ly modified to meet all United States safety and environmental specifi-
28 cations.

29 (c) A statement that the consumer may cancel the contract for autom-
30 obile brokering services for a new motor vehicle for any reason within
31 three days of the execution of such contract and that the consumer has
32 the right to a full refund within ten business days following receipt of
33 the notice of cancellation.

34 (d) A statement that, if the requested new motor vehicle cannot be
35 procured by the automobile broker business within thirty days following
36 the date of execution of the contract for automobile brokering services
37 for a new motor vehicle, the consumer has the right to cancel the
38 contract and to receive a full refund within ten business days following
39 receipt of the request for a refund, unless the delay in delivery is
40 attributable to the consumer.

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

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

47 (g) A statement that the single fee authorized by such contract for
48 automobile brokering services for a new motor vehicle is inclusive of
49 all charges incident to the purchasing, arranging, assisting, facilitat-
50 ing or effecting the purchase or lease of such new motor vehicle by the
51 automobile broker business as agent, broker, or intermediary and that no
52 other charge or expense whatsoever shall be taken, received, reserved or
53 contracted for by the automobile broker business for such services.

54 4. The contract for automobile brokering services for a new motor
55 vehicle shall be accompanied by a completed form in duplicate, captioned
56 "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 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 such customer deposit and the transfer of good title to the vehicle to the customer.

§ 6. 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 to misrepresent directly or indirectly in its advertising, promotional materials, sales presentation, or in any manner:

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

3 ~~[2-]~~ (b) The time within which the services will be performed;

4 ~~[3-]~~ (c) The cost of the services to be performed; ~~and~~

5 ~~4-]~~ (d) The ability of the automobile broker business to perform the
6 services; and

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

11 2. It shall be a fraudulent business practice for an automobile broker
12 business to refuse to disclose its registration number, issued either by
13 the state or a municipality, to a motor vehicle dealer. Furthermore, it
14 shall be a fraudulent business practice for an automobile broker busi-
15 ness to make any misrepresentation to a motor vehicle dealer or new
16 motor vehicle dealer regarding the eligibility of any consumer for any
17 discounts, reductions or any benefit programs regarding the sale or
18 lease of a motor vehicle.

19 3. It shall be a fraudulent business practice for an automobile broker
20 business to advertise new motor vehicles, through any print, electronic
21 or digital signal or medium, written or verbal statement or word,
22 design, device, sound or any combination of any such method or medium,
23 without disclosing that it is not a licensed motor vehicle dealer and is
24 not an authorized satellite location for any particular licensed motor
25 vehicle dealer.

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

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

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

43 7. It shall be a fraudulent business practice for an automobile broker
44 business to gain access to or use, or represent or advertise that it may
45 access or use, a portal, computer, or internet account owned by or
46 reserved for a new motor vehicle dealer to access or use one or more
47 finance sources that provide automotive-related loans, or purchases
48 retail installment contracts or lease contracts for motor vehicles.

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

51 § 741-b. ~~[Disclosure]~~ Disclosures required by brokers. 1. An automo-
52 bile broker business shall generate and provide a disclosure at the time
53 such automobile broker business takes an order to search for a leased or
54 purchased vehicle meeting the prospective buyer or lessee's specifica-
55 tions. Such disclosure shall provide the amount of any fees, commissions
56 or other valuable consideration the automobile broker business expects

1 to receive, if known, from [~~a dealer, lesser or~~] any [~~other~~] person or
2 entity for any assistance the automobile broker business provides in
3 effecting the purchase or lease transaction. If the amount of any such
4 fees, commissions or other valuable consideration the automobile broker
5 business expects to receive is unknown at the time of the required
6 disclosure, the automobile broker business shall disclose[~~+(a)~~] whether
7 it has a contract with any dealer, lesser or any other person or entity
8 for the provision of assistance in effecting a purchase or lease trans-
9 action[~~, and (b) whether the automobile broker business may be compen-~~
10 ~~sated by the dealer, lesser or any other person or entity for any~~
11 ~~assistance in effecting such lease transaction~~]. Nothing in this subdi-
12 vision shall be construed to permit the payment of any fees, commissions
13 or other valuable consideration to an automobile broker business by any
14 motor vehicle dealer.

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

20 (a) that the automobile broker business shall make a bona fide attempt
21 to obtain a bid, quote or offer from at least three unaffiliated dealers
22 on behalf of the prospective buyer or lessee for a motor vehicle meeting
23 the prospective buyer or lessee's specifications, including from the new
24 motor vehicle dealer of such line-make located closest to the home or
25 place of business of such prospective buyer for a consumer that seeks a
26 new motor vehicle;

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

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

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

34 4. At the time an automobile broker business solicits a bid from a new
35 motor vehicle dealer in the manner described in section seven hundred
36 thirty-seven-a of this article, such broker shall provide a disclosure
37 to each solicited dealer as to the provisions of section seven hundred
38 thirty-nine of this article.

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

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

44 § 741-c. Private information security. 1. An automobile broker busi-
45 ness shall report annually to the department of motor vehicles its
46 compliance with sections three hundred ninety-nine-cc, three hundred
47 ninety-nine-dd, three hundred ninety-nine-ddd, three hundred ninety-
48 nine-h, three hundred ninety-nine-oo, three hundred ninety-nine-p, three
49 hundred ninety-nine-pp, and eight hundred ninety-nine-bb of this chap-
50 ter. For the purposes of subdivision two of section eight hundred nine-
51 ty-nine-bb of this chapter, an automobile broker business shall not be
52 considered a small business as that term is defined in that section and
53 shall instead be subject to reasonable security requirements that are
54 equivalent to those applicable to new motor vehicle dealers.

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

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

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

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

10 3. No transaction for the purchase or lease of a new motor vehicle
11 that was arranged, assisted, facilitated or effected by an automobile
12 broker business shall be valid unless the consumer personally delivers
13 an executed purchase contract or lease, and, where applicable, financing
14 agreement, to the place of business of the dealer from which such vehi-
15 cle will be purchased or leased and such dealer verifies the identity of
16 such consumer.

17 § 9. Section 743 of the general business law, as amended by chapter
18 372 of the laws of 2016, is amended to read as follows:

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

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

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

53 3. By private party. Any persons that are or may be injured by any
54 violation of this article may bring an action in his or her own name
55 against an automobile broker business to enjoin such unlawful act or
56 practice, an action to recover his or her damages and statutory damages

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

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

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

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

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

12 § 12. Subdivision 3-a and paragraph b-3 of subdivision 5 of section
13 415 of the vehicle and traffic law, as added by chapter 477 of the laws
14 of 2017, are amended to read as follows:

15 3-a. Automobile broker business registration. a. No person shall
16 engage in the automobile broker business or represent or advertise that
17 he or she is engaged or intends to engage in the automobile broker busi-
18 ness in this state, unless there shall have been issued to him or her a
19 certificate of registration as an automobile broker business by the
20 commissioner under this section pursuant to an application for registra-
21 tion submitted pursuant to subdivision five of this section. Such regis-
22 tration shall be effective for a period not exceeding two years. At the
23 discretion of the commissioner a registration may be renewed for a peri-
24 od of up to two years upon application therefor, in such form as the
25 commissioner may prescribe, and a showing of proof of satisfaction of
26 the requirements of section seven hundred forty-a of the general busi-
27 ness law, and upon payment of the fee as herein prescribed.

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

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

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

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

54 e. As a condition of any certificate of registration issued or renewed
55 pursuant to this subdivision, and before performing any broker services
56 related to a new motor vehicle, an automobile broker business shall

1 attest in writing to each consumer, that the broker: (i) is not a fran-
2 chised new motor vehicle dealer; (ii) is not authorized or approved by a
3 manufacturer or distributor to sell a new motor vehicle or perform
4 recall or original factory warranty work; and (iii) that the broker
5 shall make a bona fide effort to solicit bids from at least three unaf-
6 filiated new motor vehicle dealers that sell a new motor vehicle or any
7 line or make desired by such consumer, including from the consumer's
8 local dealer.

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

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

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

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

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

55 22. Automobile broker record requirements. a. Automobile brokers shall
56 maintain a permanently bound book in which shall be recorded the make,

1 model, year, color and vehicle identification number of all new motor
2 vehicles for which such broker has provided a service of purchasing,
3 arranging, assisting, facilitating or effecting the purchase or lease of
4 such automobile within any preceding six-year period. Such broker shall
5 also record in such book the name and address of the purchaser or lessor
6 of such automobile, the date of sale or commencement of lease of such
7 automobile and the name and address of the dealer from which the autom-
8 obile was purchased or leased.

9 b. Automobile broker businesses shall maintain a permanently bound
10 book in which shall be recorded all completed orders to search for a new
11 motor vehicle within any preceding six-year period. Such broker shall
12 also record in such book the date of such order, the name and address of
13 the person or entity ordering such search, the automobile specifications
14 provided by such prospective buyer or lessee and the name and address of
15 the dealers solicited for a quote or offer on behalf of such prospective
16 buyer or lessee.

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

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

26 § 14. Nothing in this act shall be construed to limit, or to enlarge,
27 the protections that 47 U.S.C. § 230 confers on an interactive computer
28 service for content provided by another information content provider, as
29 such terms are defined in 47 U.S.C. § 230.

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

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