

STATE OF NEW YORK

1932--C

Cal. No. 88

2021-2022 Regular Sessions

IN ASSEMBLY

January 13, 2021

Introduced by M. of A. CARROLL, ABBATE, STIRPE, REYES, TAYLOR, CYMBROW-ITZ, DICKENS, ENGLEBRIGHT, GALEF, GOTTFRIED, DeSTEFANO, RAMOS, MIKULIN, SAYEGH, SMITH, WILLIAMS, COOK, ABINANTI, QUART, SEAWRIGHT, REILLY, B. MILLER, ROZIC, FERNANDEZ, EPSTEIN, CRUZ, STECK, PHEFFER AMATO, RA, BENEDETTO, BYRNE, JACOBSON, HYNDMAN, 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. FITZPATRICK, HEVE-SI, 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 -- ordered to a third reading -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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

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

LBD05349-07-2

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

15 § 2. Section 736-a of the general business law, as added by chapter
16 477 of the laws of 2017, is amended to read as follows:

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

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

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

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

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

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

55 § 3. The opening paragraph and paragraph (e) of subdivision 1 and
56 subdivisions 3 and 4 of section 738 of the general business law, the

opening paragraph and paragraph (e) of subdivision 1 as amended and subdivision 4 as added by chapter 28 of the laws of 2018 and subdivision 3 as amended by chapter 477 of the laws of 2017, are amended to read as follows:

Every contract between a consumer and an automobile broker business for the purchase of ~~[an automobile]~~ a motor vehicle, other than a new motor vehicle, 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:

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

3. Every contract between a consumer and an automobile broker business for the service of arranging, assisting, facilitating or effecting the purchase or lease of a new motor vehicle 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 such contract shall comply with the requirements set forth in this section and contain the following provisions, which shall be printed in at least twelve-point bold type and shall not be negated or superseded by any additional provision:

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

(b) A statement of whether a solicited new motor vehicle is or will be manufactured in accordance with United States specifications and is or will be certified by the manufacturer as such if the new motor vehicle is not or will not be manufactured in accordance with United States safety and environmental specifications, and the consumer has retained the automobile broker business to arrange for the modification of the new motor vehicle to meet such specifications, the name and street address of the modification facility and a statement in immediate proximity to such information that the automobile broker business assumes full financial responsibility that the new motor vehicle will be properly modified to meet all United States safety and environmental specifications.

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

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

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

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

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

§ 4. 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

1 executed by a surety company authorized to transact business in the
2 state by the department of financial services of the state or its
3 successor. The bonds shall be approved as to form by the secretary of
4 state and shall be conditioned on the automobile broker business'
5 payment of all valid bank drafts, including checks, drawn for the
6 purchase of motor vehicles and safekeeping of all customer deposits
7 related to the sale of a motor vehicle between the time of receipt of
8 such customer deposit and the transfer of good title to the vehicle to
9 the customer.

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

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

16 ~~[1-]~~ (a) The nature of the services to be performed and that a third
17 party will be paying for any such services;

18 ~~[2-]~~ (b) The time within which the services will be performed;

19 ~~[3-]~~ (c) The cost of the services to be performed; [and

20 4-] (d) The ability of the automobile broker business to perform the
21 services; and

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

26 2. It shall be a fraudulent business practice for an automobile broker
27 business to refuse to disclose its registration number, issued either by
28 the state or a municipality, to a motor vehicle dealer. Furthermore, it
29 shall be a fraudulent business practice for an automobile broker busi-
30 ness to make any misrepresentation to a motor vehicle dealer or new
31 motor vehicle dealer regarding the eligibility of any consumer for any
32 discounts, reductions or any benefit programs regarding the sale or
33 lease of a motor vehicle.

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

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

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

53 6. It shall be a fraudulent business practice for an automobile broker
54 business to include any pricing or financing offers or promotions in any
55 advertisement, including any print, electronic or digital signal or

1 medium, written or verbal statement or word, design, device, sound or
2 any combination of any such method or medium.

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

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

11 § 741-b. [~~Disclosure~~] Disclosures required by brokers. 1. An automo-
12 bile broker business shall generate and provide a disclosure at the time
13 such automobile broker business takes an order to search for a leased or
14 purchased vehicle meeting the prospective buyer or lessee's specifica-
15 tions. Such disclosure shall provide the amount of any fees, commissions
16 or other valuable consideration the automobile broker business expects
17 to receive, if known, from [~~a dealer, lessor or~~] any [~~other~~] person or
18 entity for any assistance the automobile broker business provides in
19 effecting the purchase or lease transaction. If the amount of any such
20 fees, commissions or other valuable consideration the automobile broker
21 business expects to receive is unknown at the time of the required
22 disclosure, the automobile broker business shall disclose[~~+(a)~~] whether
23 it has a contract with any dealer, lessor or any other person or entity
24 for the provision of assistance in effecting a purchase or lease trans-
25 action[~~, and (b) whether the automobile broker business may be compen-~~
26 ~~sated by the dealer, lessor or any other person or entity for any~~
27 ~~assistance in effecting such lease transaction~~]. Nothing in this subdi-
28 vision shall be construed to permit the payment of any fees, commissions
29 or other valuable consideration to an automobile broker business by any
30 motor vehicle dealer.

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

36 (a) that the automobile broker business shall make a bona fide attempt
37 to obtain a bid, quote or offer on behalf of the prospective buyer or
38 lessee for a motor vehicle meeting the prospective buyer or lessee's
39 specifications;

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

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

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

47 4. At the time an automobile broker business solicits a bid from a new
48 motor vehicle dealer, such broker shall provide a disclosure to each
49 solicited dealer as to the provisions of section seven hundred thirty-
50 nine of this article.

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

54 § 7. The general business law is amended by adding a new section 741-c
55 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 ninety-nine-bb of this chapter, an automobile broker business shall not be considered a small business as that term is defined in that section and shall instead be subject to reasonable security requirements that are equivalent to those applicable to new motor vehicle dealers.

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

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

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

(c) have a method of locking security items, including a locking cabinet or safe.

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

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

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

2. By local authorities. (a) Municipalities may, pursuant to local law, act upon the business activity that is the subject of this article, provided that no local government may diminish the protections or

1 requirements of this article or prevent enforcement of its provisions by
2 appropriate state officials.

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

11 3. By private party. Any persons that are or may be injured by any
12 violation of this article may bring an action in his or her own name
13 against an automobile broker business to enjoin such unlawful act or
14 practice, an action to recover his or her damages and statutory damages
15 of not less than four thousand dollars and not more than ten thousand
16 dollars for each violation, or both such actions. Injury shall include,
17 but not be limited to, lost sales on account of deceptive or unfair
18 advertising. Damages shall include, but not be limited to, lost sales
19 and the value of incentive payments, bonuses, holdbacks or similar
20 payments that would have been realized but for the actions of a person
21 who knowingly aided the violation of the provisions of this article.
22 Nothing in this section shall require a franchisor, manufacturer, or
23 distributor to grant a new motor vehicle dealer a benefit under an
24 incentive, bonus, holdback or similar payment that the new motor vehicle
25 dealer did not earn or for which the new motor vehicle dealer did not
26 qualify. Such actions may be brought regardless of whether or not the
27 underlying violation is consumer-oriented or has a public impact. Given
28 the remedial nature of this subdivision, standing to bring an action
29 under this subdivision shall be liberally construed and shall be avail-
30 able to the fullest extent otherwise permitted by law. The court may, in
31 its discretion, award treble damages if the court finds the defendant
32 willfully or knowingly violated this article. The court shall award
33 reasonable attorney's fees and costs to a prevailing plaintiff.

34 § 9. Paragraph a of subdivision 1 of section 415 of the vehicle and
35 traffic law, as amended by chapter 554 of the laws of 2015, is amended
36 to read as follows:

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

1 lease of such new motor vehicle, except this meaning shall not apply to
2 any activity of a cooperative or other advertising program or fund as
3 described in any franchise, as such term is defined by subdivision six
4 of section four hundred sixty-two of this title, or the display of
5 aggregated information and images by a national service that otherwise
6 does not have contact with consumers. Except as otherwise provided in
7 subdivisions three, five, six-b, and seven of this section, the term
8 "dealer" shall include a "new motor vehicle dealer" as defined by para-
9 graph f of this subdivision and a "qualified dealer" as defined in para-
10 graph g of this subdivision.

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

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

22 § 11. Subdivision 3-a and paragraph b-3 of subdivision 5 of section
23 415 of the vehicle and traffic law, as added by chapter 477 of the laws
24 of 2017, are amended to read as follows:

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

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

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

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

1 "(Name of registered automobile broker) is not a franchised new motor
2 vehicle dealer. We are not authorized or approved by a manufacturer or
3 distributor to sell a new motor vehicle or perform recall or original
4 factory warranty work."

5 e. As a condition of any certificate of registration issued or renewed
6 pursuant to this subdivision, and before performing any broker services
7 related to a new motor vehicle, an automobile broker business shall
8 attest in writing to each consumer, that the broker: (i) is not a fran-
9 chised new motor vehicle dealer; and (ii) is not authorized or approved
10 by a manufacturer or distributor to sell a new motor vehicle or perform
11 recall or original factory warranty work.

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

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

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

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

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

1 failed to obtain certification as an automobile broker has served as an
2 automobile broker.

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

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

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

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

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

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

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