

# STATE OF NEW YORK

4332--B

2021-2022 Regular Sessions

## IN SENATE

February 3, 2021

Introduced by Sens. SAVINO, COMRIE, GAUGHRAN, GOUNARDES, MANNION, MATT-ERA, RAMOS, SEPULVEDA, SKOUFIS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, 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,  
14 only when operating under activity covered by such registration, an  
15 automobile auctioneer, only when operating in the manner described in  
16 section twenty-three of this chapter, nor any bona fide employee of a  
17 registered new motor vehicle dealer or qualified dealer while acting for  
18 such new motor vehicle dealer or qualified dealer, or any person who  
19 sells, offers for sale or lease or acts as agent, broker or intermediary

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

LBD07655-05-2

1 in effecting the purchase or lease of three or fewer automobiles in any  
2 calendar year, any national service which aggregates information for  
3 consumers, but does not otherwise have contact with consumers, ~~[or]~~ any  
4 motor vehicle franchisor, manufacturer, or distributor, distributor  
5 branch or factory branch registered under article sixteen of the vehicle  
6 and traffic law.

7 § 2. Section 736-a of the general business law, as added by chapter  
8 477 of the laws of 2017, is amended to read as follows:

9 § 736-a. Registration required. 1. (a) No person shall engage in busi-  
10 ness as an automobile broker business, as defined in section seven  
11 hundred thirty-six of this article, without first having been issued a  
12 certificate of registration for an automobile broker business pursuant  
13 to paragraph c of subdivision seven of section four hundred fifteen of  
14 the vehicle and traffic law. A certificate of registration for an auto-  
15 mobile broker business shall be valid for a period of two years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 "Notice of Cancellation

11 You may cancel this Contract for Automobile Brokering Services for a  
12 New Motor Vehicle, without any penalty or obligation, within three days  
13 from the date that a copy of an executed contract is received by you.  
14 You may also cancel this contract, without penalty or obligation, if the  
15 automobile broker business does not produce a bid meeting your specifi-  
16 cations within thirty days of the date of execution of this contract.

17 To cancel this contract, mail or deliver a signed and dated copy of  
18 this cancellation notice, or any other written notice, to (name of auto-  
19 mobile broker business) at (address of automobile broker business) not  
20 later than midnight of the third day following your receipt of a signed  
21 contract.

22 I hereby cancel this transaction.

23 \_\_\_\_\_ (signature of consumer)

24 \_\_\_\_\_ (date)"

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

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

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

46 1. Automobile broker businesses shall obtain and continue in effect a  
47 surety bond in an amount of [one] two hundred fifty thousand dollars  
48 executed by a surety company authorized to transact business in the  
49 state by the department of financial services of the state or its  
50 successor. The bonds shall be approved as to form by the secretary of  
51 state and shall be conditioned on the automobile broker business'  
52 payment of all valid bank drafts, including checks, drawn for the  
53 purchase of motor vehicles and safekeeping of all customer deposits  
54 related to the sale of a motor vehicle between the time of receipt of  
55 such customer deposit and the transfer of good title to the vehicle to  
56 the customer.

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

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

7 [~~1-~~] (a) The nature of the services to be performed and that a third  
8 party will be paying for any such services;

9 [~~2-~~] (b) The time within which the services will be performed;

10 [~~3-~~] (c) The cost of the services to be performed; [and

11 4-] (d) The ability of the automobile broker business to perform the  
12 services; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 § 8. Section 743 of the general business law, as amended by chapter  
20 372 of the laws of 2016, is amended to read as follows:

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

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

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

55 3. By private party. Any persons that are or may be injured by any  
56 violation of this article may bring an action in his or her own name

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

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

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

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



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

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

13 3-a. Automobile broker business registration. a. No person shall  
14 engage in the automobile broker business or represent or advertise that  
15 he or she is engaged or intends to engage in the automobile broker busi-  
16 ness in this state, unless there shall have been issued to him or her a  
17 certificate of registration as an automobile broker business by the  
18 commissioner under this section pursuant to an application for registra-  
19 tion submitted pursuant to subdivision five of this section. Such regis-  
20 tration shall be effective for a period not exceeding two years. At the  
21 discretion of the commissioner a registration may be renewed for a peri-  
22 od of up to two years upon application therefor, in such form as the  
23 commissioner may prescribe, and a showing of proof of satisfaction of  
24 the requirements of section seven hundred forty-a of the general busi-  
25 ness law, and upon payment of the fee as herein prescribed.

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

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

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

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

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

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

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

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

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

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

47 22. Automobile broker record requirements. a. Automobile brokers shall  
48 maintain a permanently bound book in which shall be recorded the make,  
49 model, year, color and vehicle identification number of all new motor  
50 vehicles for which such broker has provided a service of purchasing,  
51 arranging, assisting, facilitating or effecting the purchase or lease of  
52 such automobile within any preceding six-year period. Such broker shall  
53 also record in such book the name and address of the purchaser or lessor  
54 of such automobile, the date of sale or commencement of lease of such  
55 automobile and the name and address of the dealer from which the automo-  
56 bile was purchased or leased.

1 b. Automobile broker businesses shall maintain a permanently bound  
2 book in which shall be recorded all completed orders to search for a new  
3 motor vehicle within any preceding six-year period. Such broker shall  
4 also record in such book the date of such order, the name and address of  
5 the person or entity ordering such search, the automobile specifications  
6 provided by such prospective buyer or lessee and the name and address of  
7 the dealers solicited for a quote or offer on behalf of such prospective  
8 buyer or lessee.

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

12 d. As an alternative to a bound book, an automobile broker may use a  
13 computer and software approved by the department to maintain the records  
14 required to be kept by this section, provided all information required  
15 by paragraphs a and b of this section are recorded and the records  
16 conform to such additional requirements as determined by the commission-  
17 er.

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

22 § 14. Severability. If any provision of this act, or any application  
23 of any provision of this act, is held to be invalid, that shall not  
24 affect the validity or effectiveness of any other provision of this act,  
25 or of any other application of any provision of this act, which can be  
26 given effect without that provision or application; and to that end, the  
27 provisions and applications of this act are severable.

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