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Introduced by M. of A. CARROLL, ABBATE, STIRPE, REYES, TAYLOR, CYMBROWITZ, 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:

Section 1. Subdivision 1 of section 736 of the general business law, as amended by chapter 28 of the laws of 2018, is amended to read as follows:

1. "Automobile broker business" means any person who, for a fee, commission or other valuable consideration, regardless of whether such fee, commission, or consideration is paid directly by a consumer, offers to provide, provides, or represents that he or she will provide a service of purchasing, arranging, assisting, facilitating or effecting the purchase or lease of an automobile as agent, broker, or intermediary for a consumer. "Automobile broker business" does not include any person registered as a **new motor vehicle** dealer **or qualified dealer** pursuant to article sixteen of the vehicle and traffic law**, any person registered 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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only when operating under activity covered by such registration, an automobile auctioneer, only when operating in the manner described in section twenty-three of this chapter, nor any bona fide employee of a registered **new motor vehicle dealer or qualified** dealer while acting for such **new motor vehicle dealer or qualified** dealer, or any person who sells, offers for sale or lease or acts as agent, broker or intermediary in effecting the purchase or lease of three or fewer automobiles in any calendar year, any national service which aggregates information for consumers, but does not otherwise have contact with consumers, [~~or~~] any motor vehicle franchisor, manufacturer, or distributor**, distributor branch or factory branch** registered under article sixteen of the vehicle and traffic law.

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

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

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

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

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

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

4. The commissioner of motor vehicles shall adopt rules and regulations necessary to effectuate the provisions of this section, including regulations that require the disclosure of the name, address, and registration number of an automobile broker business that provided the service of arranging, assisting, facilitating or effecting the purchase or lease of any new motor vehicle, and the fee collected by the broker from the consumer for providing such service. Such rules and regulations shall require that such information of the automobile broker business and its fee for service be printed on any invoice, bill of sale, or buyer's order, and on any application for registration or title submitted by any dealer to the department of motor vehicles on behalf of the consumer related to such purchased or leased motor vehicle.

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

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

subdivision three of section seven hundred thirty-eight of this article, an automobile broker business shall solicit a bid, from at least new motor vehicle dealers of the same line-make, that meets the specifications of such prospective buyer or lessee, including from the new motor vehicle dealer located in closest proximity to the home address of a prospective buyer or lessee of a new motor vehicle or, in the case of an entity, the place of doing business of such prospective buyer or lessee of a new motor vehicle. Whenever an automobile broker business may choose bid specifications on behalf of a consumer, such automobile broker business shall solicit a bid matching such specifications from at least three new motor vehicle dealers of the same line-make, including from the new motor vehicle dealer located in closest proximity to the home address of a prospective buyer or lessee of a new motor vehicle or, in the case of an entity, the place of doing business of such prospective buyer or lessee of a new motor vehicle.

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

(a) price or lease costs;

(b) down or similar payment;

(c) number of payments;

(d) amount of installment or monthly payments;

(e) make, model, year of production, and color of any available motor vehicle;

(f) whether the motor vehicle has accessories specifically requested by the consumer;

(g) fees;

(h) where applicable, finance charges and/or annual percentage rate;

(i) estimated delivery date of the automobile;

(j) statement of whether or not the manufacturer's warranty accompanying the motor vehicle is the same warranty as that furnished to purchasers of the same motor vehicle by an authorized dealer; and

(k) the identity of the new motor vehicle dealer offering a bid.

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

4. The commissioner of motor vehicles shall adopt rules and regulations necessary to effectuate the provisions of this section.

§ 4. The opening paragraph and paragraph (e) of subdivision 1 and 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 automo-~~

~~bile 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 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.~~] (a) The nature of the services to be performed and that a third party will be paying for any such services;

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

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

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

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

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

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

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

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

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

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

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

§ 741-b. [~~Disclosure~~] Disclosures required by brokers. 1. An automobile broker business shall generate and provide a disclosure at the time such automobile broker business takes an order to search for a leased or purchased vehicle meeting the prospective buyer or lessee's specifications. Such disclosure shall provide the amount of any fees, commissions or other valuable consideration the automobile broker business expects to receive, if known, from [~~a dealer, lessor or~~] any [~~other~~] person or entity for any assistance the automobile broker business provides in effecting the purchase or lease transaction. If the amount of any such fees, commissions or other valuable consideration the automobile broker business expects to receive is unknown at the time of the required disclosure, the automobile broker business shall disclose[~~: (a)~~] whether it has a contract with any dealer, lessor or any other person or entity for the provision of assistance in effecting a purchase or lease transaction[~~; and (b) whether the automobile broker business may be compensated by the dealer, lessor or any other person or entity for any assistance in effecting such lease transaction~~]. Nothing in this subdivision shall be construed to permit the payment of any fees, commissions or other valuable consideration to an automobile broker business by any motor vehicle dealer.

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

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

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

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

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

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

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

§ 8. The general business law is amended by adding a new section 741-c 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.

§ 9. 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 requirements of this article or prevent enforcement of its provisions by appropriate state officials.

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

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

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

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

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

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

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

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

3-a. Automobile broker business registration. **a.** No person shall engage in the automobile broker business or represent or advertise that he or she is engaged or intends to engage in the automobile broker business in this state, unless there shall have been issued to him or her a certificate of registration as an automobile broker business by the commissioner under this section pursuant to an application for registration submitted pursuant to subdivision five of this section. **Such registration shall be effective for a period not exceeding two years. At the discretion of the commissioner a registration may be renewed for a period of up to two years upon application therefor, in such form as the commissioner may prescribe, and a showing of proof of satisfaction of the requirements of section seven hundred forty-a of the general business law, and upon payment of the fee as herein prescribed.**

b. The commissioner shall not issue or renew a certificate of registration authorized by this subdivision to any dealer, franchisee, franchisor, manufacturer, distributor, distributor branch or factory branch, as such terms are defined in section four hundred sixty-two of this title, or to any subsidiary, affiliate, employee or controlled person or entity thereof.

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

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

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

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

attest in writing to each consumer, that the broker: (i) is not a franchised new motor vehicle dealer; (ii) is not authorized or approved by a manufacturer or distributor to sell a new motor vehicle or perform recall or original factory warranty work; and (iii) that the broker shall make a bona fide effort to solicit bids from at least three unaffiliated new motor vehicle dealers that sell a new motor vehicle or any line or make desired by such consumer, including from the consumer's local dealer.

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

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

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

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

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

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

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

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

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

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

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

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

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