

# STATE OF NEW YORK

4332

2021-2022 Regular Sessions

## IN SENATE

February 3, 2021

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, the vehicle and traffic law and the personal property 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 nor any bona fide employ-  
13 ee of a registered new motor vehicle dealer or qualified dealer while  
14 acting for such new motor vehicle dealer or qualified dealer, or any  
15 person who sells, offers for sale or lease or acts as agent, broker or  
16 intermediary in effecting the purchase or lease of three or fewer auto-  
17 mobiles in any calendar year, any national service which aggregates  
18 information for consumers, but does not otherwise have contact with  
19 consumers, [~~or~~] any motor vehicle franchisor, manufacturer, or distribu-  
20 tor, distributor branch or factory branch registered under article  
21 sixteen of the vehicle and traffic law.

22 § 2. Section 736-a of the general business law, as added by chapter  
23 477 of the laws of 2017, is amended to read as follows:

24 § 736-a. Registration required. 1. (a) No person shall engage in busi-  
25 ness as an automobile broker business, as defined in section seven  
26 hundred thirty-six of this article, without first having been issued a  
27 certificate of registration for an automobile broker business pursuant

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

LBD07655-01-1

1 to paragraph c of subdivision seven of section four hundred fifteen of  
2 the vehicle and traffic law. A certificate of registration for an auto-  
3 mobile broker business shall be valid for a period of two years.

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

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

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

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

23 4. The commissioner of motor vehicles shall adopt rules and regu-  
24 lations necessary to effectuate the provisions of this section, includ-  
25 ing regulations that require the disclosure of the name, address, and  
26 registration number of an automobile broker business that provided the  
27 service of arranging, assisting, facilitating or effecting the purchase  
28 or lease of any new motor vehicle, and the fee collected by the broker  
29 from the consumer for providing such service. Such rules and regulations  
30 shall require that such information of the automobile broker business  
31 and its fee for service be printed on any invoice, bill of sale, or  
32 buyer's order, and on any application for registration or title submit-  
33 ted by any dealer to the department of motor vehicles on behalf of the  
34 consumer related to such purchased or leased motor vehicle.

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

37 § 737-a. Bona fide bid soliciting required. 1. On behalf of each  
38 consumer executing a contract that conforms to the requirements of  
39 subdivision three of section seven hundred thirty-eight of this article,  
40 an automobile broker business shall solicit a bid, from at least new  
41 motor vehicle dealers of the same line-make, that meets the specifica-  
42 tions of such prospective buyer or lessee, including from the new motor  
43 vehicle dealer located in closest proximity to the home address of a  
44 prospective buyer or lessee of a new motor vehicle or, in the case of an  
45 entity, the place of doing business of such prospective buyer or lessee  
46 of a new motor vehicle. Whenever an automobile broker business may  
47 choose bid specifications on behalf of a consumer, such automobile  
48 broker business shall solicit a bid matching such specifications from at  
49 least three new motor vehicle dealers of the same line-make, including  
50 from the new motor vehicle dealer located in closest proximity to the  
51 home address of a prospective buyer or lessee of a new motor vehicle or,  
52 in the case of an entity, the place of doing business of such prospec-  
53 tive buyer or lessee of a new motor vehicle.

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

- 1 (a) price or lease costs;  
2 (b) down or similar payment;  
3 (c) number of payments;  
4 (d) amount of installment or monthly payments;  
5 (e) make, model, year of production, and color of any available motor  
6 vehicle;  
7 (f) whether the motor vehicle has accessories specifically requested  
8 by the consumer;  
9 (g) fees;  
10 (h) where applicable, finance charges and/or annual percentage rate;  
11 (i) estimated delivery date of the automobile;  
12 (j) statement of whether or not the manufacturer's warranty accompany-  
13 ing the motor vehicle is the same warranty as that furnished to purchas-  
14 ers of the same motor vehicle by an authorized dealer; and  
15 (k) the identity of the new motor vehicle dealer offering a bid.

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

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

22 § 4. The opening paragraph and paragraph (e) of subdivision 1 and  
23 subdivisions 3 and 4 of section 738 of the general business law, the  
24 opening paragraph and paragraph (e) of subdivision 1 as amended and  
25 subdivision 4 as added by chapter 28 of the laws of 2018 and subdivision  
26 3 as amended by chapter 477 of the laws of 2017, are amended to read as  
27 follows:

28 Every contract between a consumer and an automobile broker business  
29 for the purchase of [~~an automobile~~] a motor vehicle, other than a new  
30 motor vehicle, shall be in writing, shall be dated, shall contain the  
31 street address of the automobile broker business and the consumer and  
32 shall be signed by the consumer and by the automobile broker business.  
33 Every contract shall comply with the requirements set forth in this  
34 section and contain the following:

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

43 3. Every contract between a consumer and an automobile broker business  
44 for the service of arranging, assisting, facilitating or effecting the  
45 purchase or lease of a new motor vehicle shall be in writing, shall be  
46 dated, shall contain the street address of the automobile broker busi-  
47 ness and the consumer, and shall be signed by the consumer and by the  
48 automobile broker business. Every such contract shall comply with the  
49 requirements set forth in this section and contain the following  
50 provisions, which shall be printed in at least twelve-point bold type  
51 and shall not be negated or superseded by any additional provision:

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

55 (b) A statement of whether a solicited new motor vehicle is or will be  
56 manufactured in accordance with United States specifications and is or

1 will be certified by the manufacturer as such if the new motor vehicle  
2 is not or will not be manufactured in accordance with United States  
3 safety and environmental specifications, and the consumer has retained  
4 the automobile broker business to arrange for the modification of the  
5 new motor vehicle to meet such specifications, the name and street  
6 address of the modification facility and a statement in immediate prox-  
7 imity to such information that the automobile broker business assumes  
8 full financial responsibility that the new motor vehicle will be proper-  
9 ly modified to meet all United States safety and environmental specifi-  
10 cations.

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

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

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

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

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

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

41 "Notice of Cancellation

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

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

53 I hereby cancel this transaction.

54 \_\_\_\_\_ (signature of consumer)

55 \_\_\_\_\_ (date)"

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

4     ~~[4.-An] 6. In addition to the brokering services agreement required by~~  
5 ~~subdivision one of this section, an~~ automobile broker business in any  
6 transaction involving the lease of a vehicle shall provide the retail  
7 lessee with a retail lease agreement as provided for in section three  
8 hundred thirty-seven of the personal property law. [~~The automobile~~  
9 ~~broker shall provide a written disclosure of the amount of any fee,~~  
10 ~~commission or other consideration paid or expected to be paid by the~~  
11 ~~lessor to the automobile broker business in connection with a trans-~~  
12 ~~action involving the lease of a vehicle. Such disclosure shall be signed~~  
13 ~~by the retail lessee. The automobile broker business shall provide the~~  
14 ~~retail lessee with a signed copy of such disclosure together with the~~  
15 ~~retail lease agreement referenced herein.] Nothing in this section shall  
16 be construed to permit the delivery of an executed retail lease agree-  
17 ment to a new motor vehicle by a person other than the prospective  
18 lessee.~~

19     § 5. Subdivision 1 of section 740-a of the general business law, as  
20 amended by chapter 477 of the laws of 2017, is amended to read as  
21 follows:

22     1. Automobile broker businesses shall obtain and continue in effect a  
23 surety bond in an amount of [~~one~~] two hundred fifty thousand dollars  
24 executed by a surety company authorized to transact business in the  
25 state by the department of financial services of the state or its  
26 successor. The bonds shall be approved as to form by the secretary of  
27 state and shall be conditioned on the automobile broker business'  
28 payment of all valid bank drafts, including checks, drawn for the  
29 purchase of motor vehicles and safekeeping of all customer deposits  
30 related to the sale of a motor vehicle between the time of receipt of  
31 such customer deposit and the transfer of good title to the vehicle to  
32 the customer.

33     § 6. Section 741 of the general business law, as added by chapter 616  
34 of the laws of 1988, is amended to read as follows:

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

39     ~~[1-]~~ (a) The nature of the services to be performed and that a third  
40 party will be paying for any such services;

41     ~~[2-]~~ (b) The time within which the services will be performed;

42     ~~[3-]~~ (c) The cost of the services to be performed; [~~and~~

43     ~~4-]~~ (d) The ability of the automobile broker business to perform the  
44 services; and

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

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



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

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

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

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

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

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

33 § 741-b. ~~[Disclosure]~~ Disclosures required by brokers. 1. An automo-  
34 bile broker business shall generate and provide a disclosure at the time  
35 such automobile broker business takes an order to search for a leased or  
36 purchased vehicle meeting the prospective buyer or lessee's specifica-  
37 tions. Such disclosure shall provide the amount of any fees, commissions  
38 or other valuable consideration the automobile broker business expects  
39 to receive, if known, from ~~[a dealer, lessor or]~~ any ~~[other]~~ person or  
40 entity for any assistance the automobile broker business provides in  
41 effecting the purchase or lease transaction. If the amount of any such  
42 fees, commissions or other valuable consideration the automobile broker  
43 business expects to receive is unknown at the time of the required  
44 disclosure, the automobile broker business shall disclose~~[, and (a)]~~ whether  
45 it has a contract with any dealer, lessor or any other person or entity  
46 for the provision of assistance in effecting a purchase or lease trans-  
47 action~~[, and (b) whether the automobile broker business may be compen-~~  
48 ~~sated by the dealer, lessor or any other person or entity for any~~  
49 ~~assistance in effecting such lease transaction]~~. Nothing in this subdi-  
50 vision shall be construed to permit the payment of any fees, commissions  
51 or other valuable consideration to an automobile broker business by any  
52 motor vehicle dealer.

53 2. An automobile broker business shall generate and provide an addi-  
54 tional disclosure to the consumer at the time such automobile broker  
55 business takes an order to search for a motor vehicle meeting the

1 prospective buyer or lessee's specifications. Such additional disclosure  
2 shall state the following:

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

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

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

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

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

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

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

27 § 741-c. Private information security. 1. An automobile broker busi-  
28 ness shall report annually to the department of motor vehicles its  
29 compliance with sections three hundred ninety-nine-cc, three hundred  
30 ninety-nine-dd, three hundred ninety-nine-ddd, three hundred ninety-  
31 nine-h, three hundred ninety-nine-oo, three hundred ninety-nine-p, three  
32 hundred ninety-nine-pp, and eight hundred ninety-nine-bb of this chap-  
33 ter. For the purposes of subdivision two of section eight hundred nine-  
34 ty-nine-bb of this chapter, an automobile broker business shall not be  
35 considered a small business as that term is defined in that section and  
36 shall instead be subject to reasonable security requirements that are  
37 equivalent to those applicable to new motor vehicle dealers.

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

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

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

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

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



er 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

1 he or she is engaged or intends to engage in the automobile broker busi-  
2 ness in this state, unless there shall have been issued to him or her a  
3 certificate of registration as an automobile broker business by the  
4 commissioner under this section pursuant to an application for registra-  
5 tion submitted pursuant to subdivision five of this section. Such regis-  
6 tration shall be effective for a period not exceeding two years. At the  
7 discretion of the commissioner a registration may be renewed for a peri-  
8 od of up to two years upon application therefor, in such form as the  
9 commissioner may prescribe, and a showing of proof of satisfaction of  
10 the requirements of section seven hundred forty-a of the general busi-  
11 ness law, and upon payment of the fee as herein prescribed.

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

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

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

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

38 e. As a condition of any certificate of registration issued or renewed  
39 pursuant to this subdivision, and before performing any broker services  
40 related to a new motor vehicle, an automobile broker business shall  
41 attest in writing to each consumer, that the broker: (i) is not a fran-  
42 chised new motor vehicle dealer; (ii) is not authorized or approved by a  
43 manufacturer or distributor to sell a new motor vehicle or perform  
44 recall or original factory warranty work; and (iii) that the broker  
45 shall make a bona fide effort to solicit bids from at least three unaf-  
46 filiated new motor vehicle dealers that sell a new motor vehicle or any  
47 line or make desired by such consumer, including from the consumer's  
48 local dealer.

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

1 facilitating or effecting the purchase or lease of such new motor vehi-  
2 cle.

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

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

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

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

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

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

1 the dealers solicited for a quote or offer on behalf of such prospective  
2 buyer or lessee.

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

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

12 § 14. Subdivision 5 of section 337 of the personal property law is  
13 amended by adding a new paragraph (m) and such section is amended by  
14 adding a new subdivision 4-a to read as follows:

15 4-a. Any credit application, or other request for a determination of  
16 creditworthiness, in furtherance of a retail lease agreement for a new  
17 motor vehicle, that is submitted to a lessor or anticipated assignee  
18 that is a manufacturer, as such term is defined in section four hundred  
19 fifteen of the vehicle and traffic law, a person under contract with a  
20 manufacturer to serve as holder, or a captive finance source, as such  
21 term is defined by subdivision sixteen of section four hundred sixty-two  
22 of the vehicle and traffic law, shall include the name, address, and  
23 department of motor vehicles registration number of the automobile  
24 broker business that provided the service of arranging, assisting,  
25 facilitating or effecting such agreement as agent, broker, or interme-  
26 diary for such retail lessee, and the amount of the fee paid by the  
27 consumer to the automobile broker business, as such term is used in  
28 article thirty-five-B of the general business law, for the service of  
29 arranging, assisting, facilitating or effecting the lease of such new  
30 motor vehicle.

31 (m) In the case of a retail lease agreement for a new motor vehicle,  
32 as such term is defined in subdivision eleven of section four hundred  
33 sixty-two of the vehicle and traffic law, where the lessor or antic-  
34 ipated assignee is a manufacturer, as such term is defined in subdivi-  
35 sion nine of section four hundred sixty-two of the vehicle and traffic  
36 law, a person under contract with the manufacturer of such leased new  
37 motor vehicle to serve as holder, or a captive finance source, as such  
38 term is defined by subdivision sixteen of section four hundred sixty-two  
39 of the vehicle and traffic law, the name, address, and department of  
40 motor vehicles registration number of the automobile broker business  
41 that provided the service of arranging, assisting, facilitating or  
42 effecting such agreement as agent, broker, or intermediary for such  
43 retail lessee, and the amount of the fee paid by the consumer to the  
44 automobile broker business, as such term is used in article  
45 thirty-five-B of the general business law, for the service of arranging,  
46 assisting, facilitating or effecting the lease of such new motor vehi-  
47 cle.

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

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