

STATE OF NEW YORK

4332--A

2021-2022 Regular Sessions

IN SENATE

February 3, 2021

Introduced by Sens. SAVINO, BENJAMIN, GOUNARDES, MATTERA -- 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

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
20 in effecting the purchase or lease of three or fewer automobiles in any
21 calendar year, any national service which aggregates information for
22 consumers, but does not otherwise have contact with consumers, [~~or~~]
23 motor vehicle franchisor, manufacturer, or distributor, distributor

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

LBD07655-03-1

1 branch or factory branch registered under article sixteen of the vehicle
2 and traffic law.

3 § 2. Section 736-a of the general business law, as added by chapter
4 477 of the laws of 2017, is amended to read as follows:

5 § 736-a. Registration required. 1. (a) No person shall engage in busi-
6 ness as an automobile broker business, as defined in section seven
7 hundred thirty-six of this article, without first having been issued a
8 certificate of registration for an automobile broker business pursuant
9 to paragraph c of subdivision seven of section four hundred fifteen of
10 the vehicle and traffic law. A certificate of registration for an auto-
11 mobile broker business shall be valid for a period of two years.

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

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

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

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

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

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

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

1 least three new motor vehicle dealers of the same line-make, including
2 from the new motor vehicle dealer located in closest proximity to the
3 home address of a prospective buyer or lessee of a new motor vehicle or,
4 in the case of an entity, the place of doing business of such prospec-
5 tive buyer or lessee of a new motor vehicle.

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

9 (a) price or lease costs;

10 (b) down or similar payment;

11 (c) number of payments;

12 (d) amount of installment or monthly payments;

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

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

17 (g) fees;

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

19 (i) estimated delivery date of the automobile;

20 (j) statement of whether or not the manufacturer's warranty accompany-
21 ing the motor vehicle is the same warranty as that furnished to purchas-
22 ers of the same motor vehicle by an authorized dealer; and

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

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

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

30 § 4. The opening paragraph and paragraph (e) of subdivision 1 and
31 subdivisions 3 and 4 of section 738 of the general business law, the
32 opening paragraph and paragraph (e) of subdivision 1 as amended and
33 subdivision 4 as added by chapter 28 of the laws of 2018 and subdivision
34 3 as amended by chapter 477 of the laws of 2017, are amended to read as
35 follows:

36 Every contract between a consumer and an automobile broker business
37 for the purchase of [~~an automobile~~] a motor vehicle, other than a new
38 motor vehicle, shall be in writing, shall be dated, shall contain the
39 street address of the automobile broker business and the consumer and
40 shall be signed by the consumer and by the automobile broker business.
41 Every contract shall comply with the requirements set forth in this
42 section and contain the following:

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

51 3. Every contract between a consumer and an automobile broker business
52 for the service of arranging, assisting, facilitating or effecting the
53 purchase or lease of a new motor vehicle shall be in writing, shall be
54 dated, shall contain the street address of the automobile broker busi-
55 ness and the consumer, and shall be signed by the consumer and by the
56 automobile broker business. Every such contract shall comply with the

1 requirements set forth in this section and contain the following
2 provisions, which shall be printed in at least twelve-point bold type
3 and shall not be negated or superseded by any additional provision:

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

7 (b) A statement of whether a solicited new motor vehicle is or will be
8 manufactured in accordance with United States specifications and is or
9 will be certified by the manufacturer as such if the new motor vehicle
10 is not or will not be manufactured in accordance with United States
11 safety and environmental specifications, and the consumer has retained
12 the automobile broker business to arrange for the modification of the
13 new motor vehicle to meet such specifications, the name and street
14 address of the modification facility and a statement in immediate prox-
15 imity to such information that the automobile broker business assumes
16 full financial responsibility that the new motor vehicle will be proper-
17 ly modified to meet all United States safety and environmental specifi-
18 cations.

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

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

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

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

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

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

49 "Notice of Cancellation

50 You may cancel this Contract for Automobile Brokering Services for a
51 New Motor Vehicle, without any penalty or obligation, within three days
52 from the date that a copy of an executed contract is received by you.
53 You may also cancel this contract, without penalty or obligation, if the
54 automobile broker business does not produce a bid meeting your specifi-
55 cations 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.

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

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

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

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

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

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

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

41 § 741-b. [~~Disclosure~~] Disclosures required by brokers. 1. An automo-
42 bile broker business shall generate and provide a disclosure at the time
43 such automobile broker business takes an order to search for a leased or
44 purchased vehicle meeting the prospective buyer or lessee's specifica-
45 tions. Such disclosure shall provide the amount of any fees, commissions
46 or other valuable consideration the automobile broker business expects
47 to receive, if known, from [~~a dealer, lessor or~~] any [~~other~~] person or
48 entity for any assistance the automobile broker business provides in
49 effecting the purchase or lease transaction. If the amount of any such
50 fees, commissions or other valuable consideration the automobile broker
51 business expects to receive is unknown at the time of the required
52 disclosure, the automobile broker business shall disclose[~~+(a)~~] whether
53 it has a contract with any dealer, lessor or any other person or entity
54 for the provision of assistance in effecting a purchase or lease trans-
55 action[~~, and (b) whether the automobile broker business may be compen-~~
56 ~~sated by the dealer, lessor or any other person or entity for any~~

1 ~~assistance in effecting such lease transaction~~]. Nothing in this subdivi-
2 vision shall be construed to permit the payment of any fees, commissions
3 or other valuable consideration to an automobile broker business by any
4 motor vehicle dealer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 3. By private party. Any persons that are or may be injured by any
45 violation of this article may bring an action in his or her own name
46 against an automobile broker business to enjoin such unlawful act or
47 practice, an action to recover his or her damages and statutory damages
48 of not less than four thousand dollars and not more than ten thousand
49 dollars for each violation, or both such actions. Injury shall include,
50 but not be limited to, lost sales on account of deceptive or unfair
51 advertising and depriving a new motor vehicle dealer located closest to
52 a lessee or purchaser the opportunity to bid on such lease or purchase
53 as entitled by this article. Damages shall include, but not be limited
54 to, lost sales and the value of incentive payments, bonuses, holdbacks
55 or similar payments that would have been realized had a lessee or
56 purchaser purchased or leased such vehicle from the new motor vehicle

1 dealer in closest proximity to such lessee or purchaser but for the
2 actions of a person who knowingly aided the violation of the provisions
3 of this article. Nothing in this section shall require a franchisor,
4 manufacturer, or distributor to grant a new motor vehicle dealer a bene-
5 fit under an incentive, bonus, holdback or similar payment that the new
6 motor vehicle dealer did not earn or for which the new motor vehicle
7 dealer did not qualify. Such actions may be brought regardless of wheth-
8 er or not the underlying violation is consumer-oriented or has a public
9 impact. Given the remedial nature of this subdivision, standing to bring
10 an action under this subdivision shall be liberally construed and shall
11 be available to the fullest extent otherwise permitted by law. The court
12 may, in its discretion, award treble damages if the court finds the
13 defendant willfully or knowingly violated this article. The court shall
14 award reasonable attorney's fees and costs to a prevailing plaintiff.

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

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

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

50 d. It is hereby declared to be a fraudulent practice, for the purposes
51 of paragraph c of subdivision nine of this section, for a dealer to use
52 any subsidiary corporation, affiliated corporation, or any other
53 controlled corporation, partnership, association, business or person to
54 accomplish what would otherwise be unlawful conduct under this article
55 or article thirty-five-B of the general business law, including request-
56 ing that an automobile broker business represent such dealer in generat-

1 ing a sale or lease or making payment to, either directly or indirectly,
2 an automobile broker business.

3 § 12. Subdivision 3-a and paragraph b-3 of subdivision 5 of section
4 415 of the vehicle and traffic law, as added by chapter 477 of the laws
5 of 2017, are amended to read as follows:

6 3-a. Automobile broker business registration. a. No person shall
7 engage in the automobile broker business or represent or advertise that
8 he or she is engaged or intends to engage in the automobile broker busi-
9 ness in this state, unless there shall have been issued to him or her a
10 certificate of registration as an automobile broker business by the
11 commissioner under this section pursuant to an application for registra-
12 tion submitted pursuant to subdivision five of this section. Such regis-
13 tration shall be effective for a period not exceeding two years. At the
14 discretion of the commissioner a registration may be renewed for a peri-
15 od of up to two years upon application therefor, in such form as the
16 commissioner may prescribe, and a showing of proof of satisfaction of
17 the requirements of section seven hundred forty-a of the general busi-
18 ness law, and upon payment of the fee as herein prescribed.

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

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

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

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

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

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 § 13. 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 § 14. 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 § 15. 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 § 16. 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.