STATE OF NEW YORK

3499--A

R. R. 442

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. CARROLL, STIRPE, REYES, TAYLOR, DICKENS, DeSTEFANO, RAMOS, MIKULIN, SAYEGH, SMITH, WILLIAMS, COOK, SEAWRIGHT, REILLY, MILLER, ROZIC, EPSTEIN, CRUZ, STECK, RA, BENEDETTO, JACOBSON, HYNDMAN, THIELE, LAVINE, STERN, JONES, BUTTENSCHON, BRAUNSTEIN, FALL, PAULIN, L. ROSENTHAL, WALLACE, DILAN, AUBRY, JEAN-PIERRE, DARLING, WALKER, ANDERSON, JACKSON -- Multi-Sponsored by -- M. of A. FITZPATRICK, HEVESI, SIMON -- read once and referred to the Committee on Consumer Affairs and Protection -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- ordered to a third reading -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

AN ACT to amend the general business law and the vehicle and traffic law, in relation to automobile 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 dealer pursuant to article sixteen of the vehicle and traffic law**, only when operating in a manner pursuant to such registration under article sixteen of the vehicle and traffic law, any person registered under section four hundred fifteen-a of the vehicle and traffic law, only when operating in a manner described in section four**

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

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hundred fifteen-a of the vehicle and traffic law, 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 dealer while acting for such 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 of the general business law is amended by adding a new subdivision 4 to read as follows:

4. "Place of business" means a designated permanent location at which the business of the automobile broker business is conducted.

§ 3. The general business law is amended by adding a new section 736-b to read as follows:

§ 736-b. Place of business required. 1. No person shall engage in business as an automobile broker business, as defined in section seven hundred thirty-six of this article, without maintaining a place of business.

2. The 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 shall be amended within thirty days of a change of address of an automobile broker business to reflect the new address of its place of business.

§ 4. Subdivision 1 and the opening paragraph of subdivision 2 of section 738 of the general business law, subdivision 1 and the opening paragraph of subdivision 2 as added by chapter 616 of the laws of 1988, the opening paragraph and paragraph (e) of subdivision 1 as amended by chapter 28 of the laws of 2018, and paragraphs (f) and (g) of subdivision 1 as amended by chapter 477 of the laws of 2017, are amended to read as follows:

1. Prior to the purchase or lease of an automobile, the consumer and the automobile broker business shall enter into a contract. Every contract between a consumer and an automobile broker business for the purchase or lease of an automobile shall be in writing, shall be dated, shall contain the street address of the place of business of the automobile broker business, the registration number issued to the automobile broker business pursuant to section four hundred fifteen of the vehicle and traffic law and the name and address of 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:

(a) A complete description of the automobile and each option, if any, ordered; a statement of whether the automobile is or will be manufactured in accordance with United States specifications and is or will be certified by the manufacturer as such; if the automobile 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 automobile 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 automobile will be properly modified to meet all United States safety and environmental specifications.

(b) The price of the automobile including any options ordered. If the price set forth is an estimated price, a statement in immediate proximity to the price that the price is an estimated price only and that the consumer has the right to cancel the contract and to receive a full refund if the final price exceeds the estimated price by more than five percent.

(c) The estimated delivery date of the automobile and the place of delivery and a statement in immediate proximity to the estimated delivery date that, if the automobile has not been delivered in accordance with the contract within thirty days following such estimated delivery date, the consumer has the right to cancel the contract and to receive a full refund, unless the delay in delivery is attributable to the consumer.

(d) A statement of whether or not the manufacturer's warranty accompanying the automobile is the same warranty as that furnished to purchasers of that make automobile from an authorized dealer located in the United States.

(e) **A statement that the broker will not accept payment for their services from anyone other than the motor vehicle dealer.**

(f) A statement that the consumer has the option to take delivery of a motor vehicle at the selling or leasing dealership.

(g) 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 **or leased**, as well as all fees, commissions or other valuable considerations paid by an automobile dealer to the automobile broker business for selling, arranging, assisting or effecting the sale **or lease** of an automobile as agent, broker, or intermediary between the consumer and the automobile dealer.

[~~(f)~~] **(h)** If a consumer elects to cancel the contract pursuant to paragraph (b) or (c) of this subdivision, he or she shall notify in writing the automobile broker business at the address specified in the contract. The automobile broker business shall make a full refund to the consumer within ten business days following receipt of the request for a refund. The contract shall contain a statement, setting forth the consumer's right to cancel the contract under paragraphs (b) and (c) of this subdivision and the refund obligations of the automobile broker business.

[~~(g)~~] **(i)** The statements required by paragraphs (a), (b), (c), [~~and~~] **(e),** (f)**, (g) and (h)** of this subdivision shall be printed in at least [~~ten~~] **twelve** point bold type.

The contract 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 [~~ten~~] **twelve** point type the following:

§ 5. Section 741-a of the general business law, as amended by chapter 477 of the laws of 2017, is amended to read as follows:

§ 741-a. Advertising. **1.** Automobile broker businesses shall clearly and conspicuously disclose the following in all advertisements in any medium, and in any print advertisement such disclosures shall not appear in any footnotes and shall be situated in the top half of any such advertisement in an easily readable typeface:

(a) That the automobile broker business is not a registered new motor vehicle dealer but is a registered automobile broker business as defined in section four hundred fifteen of the vehicle and traffic law;

(b) The registration number issued to the automobile broker business pursuant to section four hundred fifteen of the vehicle and traffic law;

(c) Whether any fees may be imposed by the automobile broker business for services rendered. Details of such compensation shall be provided by the automobile broker business upon request by the consumer; [~~and~~]

(d) That no warranty repair services will be provided by the automobile broker business; and

(e) That the automobile broker business is not affiliated with any manufacturer, dealership, or dealership group.

2. The official business certificate of registration shall be clearly and conspicuously displayed at the place of business of an automobile broker business.

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

§ 741-c. Private information security. In addition to the requirements of subdivision twenty-one of section four hundred fifteen of the vehicle and traffic law, an automobile broker business shall:

1. 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;

2. have a separate mailbox at such place of business for the automobile broker business; and

3. have a method of securing personal information, including but not limited to in a locking cabinet or safe.

§ 7. Section 415 of the vehicle and traffic law is amended by adding four new subdivisions 22, 23, 24 and 25 to read as follows:

22. Compliance. All dealers and automobile broker businesses registered under subdivisions three and three-a of this section shall certify and attest to compliance with sections three hundred ninety-nine-cc, as added by chapter 655 of the laws of 2005, three hundred ninety-nine-dd, as added by chapter 487 of the laws of 2006, 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, eight hundred ninety-nine-bb of the general business law, and part three hundred fourteen of title sixteen of the code of federal regulations as applicable.

23. Automobile broker record requirements. (a) For each completed transaction and within three business days of consummation thereof, automobile brokers shall maintain a permanent paper file record that clearly evidences and records the make, model, year, color and vehicle identification number of all previously unregistered motor vehicles for which such broker has provided a service of purchasing, arranging, assisting, facilitating or effecting the purchase or lease of such motor vehicle. Such records shall be maintained for a six-year period after consummation of the transaction. Such records shall also include the name and address of the purchaser or lessee of such motor vehicle, the date of sale or commencement of lease with respect to such motor vehicle and the name and address of the dealer from which the motor vehicle was purchased or leased.

(b) The records maintained by the automobile broker businesses shall include a copy of the dealer rate sheets received by the automobile broker from the dealers that were relied upon by the automobile broker in connection with such transaction.

(c) Such records shall be open for inspection by the commissioner, or his or her agent, during reasonable business hours.

(d) As an alternative to paper file records, an automobile broker may use a computer and appropriate software to maintain the records required

to be kept by this section, provided all information required by paragraphs (a) and (b) of this subdivision are duly recorded and maintained in accordance with this subdivision.

24. Maintenance records. For each sale or lease of a motor vehicle that involves an automobile broker business, the dealer must obtain evidence of the automobile broker business' registration and the broker's registration number and maintain such records in the deal jacket for each transaction which also shall contain the purchase order, copies of the title and registration documents, the bill of sale and the retail installment sale contract required under article ten of the personal property law or the retail lease agreement required under article nine-A of the personal property law.

25. Broker compensation. No dealer may offer or pay an automobile broker business any fee, or commission, other than compensation disclosed pursuant to section seven hundred thirty-eight or seven hundred forty-one-b of the general business law or section three hundred two or three hundred thirty-seven of the personal property law.

§ 8. The general business law is amended by adding a new section 745 to read as follows:

§ 745. Preemption. The provisions of this article and section four hundred fifteen of the vehicle and traffic law shall govern the requirements and obligations with respect to the automobile broker business notwithstanding any other law to the contrary. No local or municipal law shall be enacted which shall impose any different or other obligations on the automobile broker business including a requirement of any fee or license for the automobile broker business.

§ 9. 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. An automobile broker business shall provide a disclosure at the time such automobile broker business takes an order to search for a leased or purchased vehicle meeting the prospective 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 lease or purchase 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 lease or purchase transaction; [~~and~~] (b) [~~whether~~] that the automobile broker business [~~may~~] shall be compensated by the dealer, lessor or any other person or entity for any assistance in effecting such lease transaction; and (c) that the amount of any such fees, commissions or other valuable consideration the automobile broker business receives shall be disclosed on the executed lease or purchase contract or finance agreement pursuant to section three hundred two or three hundred thirty-seven of the personal property law.

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

§ 741-c. Prohibited acts. An automobile broker business is prohibited from:

1. advertising that such automobile broker business has any new automobile in stock;

2. advertising any price figure in an advertisement unless such figure represents the actual price of the advertised automobile, exclusive of registration and titles, fees and taxes;

3. starting or completing any financing or credit application or the lease or purchase agreement of an automobile on behalf of a consumer or dealer; and

4. accepting any payment other than that disclosed under section seven hundred thirty-eight or seven hundred forty-one-b of this article from anyone other than the dealer.

§ 11. 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 attorney general. **1.** 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 thousand dollars and not more than three 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. The provisions of this article may be enforced concurrently by a municipal consumer affairs office.

§ 12. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 13. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.