

Automobile Broker Business

(June 2016)

New York State
DEPARTMENT OF STATE
Division of Licensing Services
www.dos.ny.gov

Andrew M. Cuomo
Governor

Rossana Rosado
Secretary of State

Automobile Broker Business

Article 35-B, General Business Law

Section

736	Definitions
737	Advance fees prohibited
738	Contracts; requirements and contents
739	Contracts void and unenforceable
740	Escrow required for advance payments
740-a	Automobile broker business surety bond
741	Deceptive acts prohibited
741-a	Advertising
742	Action for recovery of damages by consumer
743	Enforcement by attorney general
744	Severability

Automobile Broker Business

§736. Definitions

As used in this article:

1. "Automobile broker business" means any person who, for a fee, commission or other valuable consideration paid by a consumer offers to provide, provides, or represents that he will provide a service of purchasing, arranging, assisting or effecting the purchase 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, or any person who sells, offers for sale or acts as agent, broker or intermediary in effecting the purchase of three or less automobiles in any calendar year.

2. "Consumer" means a natural person who is solicited to purchase or who purchases the services of an automobile broker business.

3. "Person" includes an individual, corporation, partnership, joint venture, or any other business entity.

§737. Advance fees prohibited

No automobile broker business shall solicit, receive or collect from a consumer any fee, or commission, in advance of the performance of those services specified in the contract as required by section seven hundred thirty-eight of this article.

§738. Contracts; requirements and contents

1. Every contract between a consumer and an automobile broker business shall be in writing, shall be dated, shall contain the street address of the automobile broker business and the consumer and shall be signed by the consumer and by the automobile broker business. Every contract shall comply with the requirements set forth in this section and contain the following:

(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 description of any other services and an itemization of the charges for each. Such description shall include disclosure of the automobile dealer from which the automobile was purchased, as well as all fees, commissions or other valuable considerations paid by an automobile dealer to the automobile broker business for selling, arranging, assisting or effecting the sale of an automobile as agent, broker, or intermediary between the consumer and the automobile dealer.

(f) If a consumer elects to cancel the contract pursuant to paragraph (b) or (c) of this subdivision, he 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) The statements required by paragraphs (a), (b), (c) and (f) of this subdivision shall be printed in at least ten point bold type.

2. 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 point type the following:

"Notice of Cancellation"

"You may cancel this contract, without any penalty or obligation, within three days from the date that a copy of an executed contract is received by you.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to

(_____) at (_____)
name of automobile broker business address

not later than midnight of the third day following your receipt of a signed contract.

I hereby cancel this transaction."

(signature of consumer)

(date)

3. An automobile broker business shall deliver to the consumer or mail to him at the address shown on the contract, an executed copy thereof.

§ 739. Contracts void and unenforceable

1. Any contract for services which does not comply with the applicable provisions of this article shall be void and unenforceable as contrary to public policy.

2. Any waiver by a consumer of the provisions of this article shall be deemed void and unenforceable as contrary to public policy.

§ 740. Escrow required for advance payments

All monies paid by a consumer to an automobile broker business in connection with a transaction covered by this article shall be trust funds in the possession of such automobile broker business and shall be deposited by it within five days after receipt thereof, in an account in a banking

organization within the state. The automobile broker business shall thereupon notify in writing the consumer, giving the name and address of the banking organization and the amount deposited. The monies shall be held on deposit until fully applied to the contract price at the time the automobile is delivered to the consumer, unless sooner repaid in accordance with the provisions of this article.

§ 740-a. Automobile broker business surety bond

1. Automobile broker businesses shall obtain and continue in effect a surety bond in an amount of seventy-five thousand dollars executed by a surety company authorized to transact business in the state by the insurance department 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.

2. Recovery against a bond may be made by a person, including the state, who obtains a judgment against the automobile broker business for an act or omission on which the bond is conditioned if the act or omission occurred during the term of the bond. The total liability imposed on the surety under this section for all breaches of the bond condition is limited to the face amount of the bond. Such liability may include, but is not limited to, the amount of the valid bank drafts, including checks, drawn by the automobile broker business for the purchase of motor vehicles. In no event shall the surety on a bond be liable for total claims in excess of the bond amount, regardless of the number or nature of claims made against the bond or the number of years the bond remained in force.

3. Any surety issuing a bond pursuant to this subdivision shall be required to provide sixty days' notice to the secretary of state prior to the effective date of cancellation of the bond.

§ 741. Deceptive acts prohibited

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. The nature of the services to be performed;
2. The time within which the services will be performed;
3. The cost of the services to be performed; and
4. The ability of the automobile broker business to perform the services.

§ 741-a. Advertising

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 licensed new motor vehicle dealer as defined in section four hundred fifteen of the vehicle and traffic law;
- (b) 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
- (c) That no warranty repair services will be provided by the automobile broker business.

§ 742. Action for recovery of damages by consumer

Any consumer injured by a violation of this article or by the breach by an automobile broker business of a contract which has been entered into pursuant to section seven hundred thirty-nine of this article may bring an action for recovery of damages. Judgment shall be entered in favor of a consumer in an amount not to exceed three times the actual damages, but in no case less than the amount paid by the buyer to the automobile broker business. The court may award reasonable attorney's fees to a prevailing plaintiff.

§ 743. Enforcement 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 may impose a civil penalty of not more than one 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.

§ 744. Severability

If any provision of this article or if any application thereof to any person or circumstance is held invalid, the remainder of this article and the application of the provision to other persons and circumstances shall not be affected thereby.