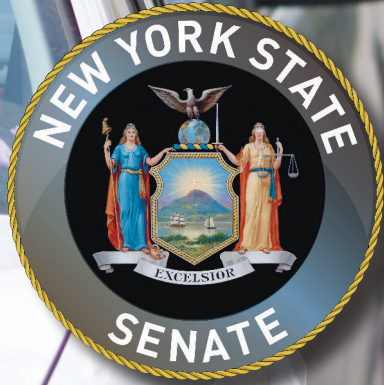


# Senator Jeffrey D. Klein & Assemblyman Francisco Moya



## *Curbstoning: Costs & Consequences*

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November 2015

## Introduction

Every year, millions of used cars are sold across the United States. For many people, a used car is a much more economical option on a limited budget than a new one; others choose a used vehicle as a first car to give to their children, while still some may prefer older models or would rather deal with an owner than a car dealer. Edmunds.com estimates that well over 9.5 million used cars changed hands nationwide in the second quarter of 2015 alone – and that number has continued to increase over recent years.<sup>1</sup>

Some used cars are sold directly from one individual to another, but many others are sold by used car dealers. Used car dealers in New York are required to be registered with the state, which regulates their business practices, ensures car safety, and collects taxes on transactions. The state also places limitations on private sellers, to ensure that buyers can negotiate their own terms with honest owners who are looking to make a little money while passing on their trusty used vehicle.

Unfortunately, unscrupulous individuals take advantage of this distinction to sell damaged, stolen, or otherwise unsafe vehicles for significant profit. These unlicensed dealers pose as the car's owner and pawn it off onto an unwary buyer for thousands of dollars, leaving them with a stolen or damaged car that could cost them thousands more to repair, and no recourse. Because these criminal dealers sell multiple vehicles at a time but have no physical lot to store them in, they simply park them on the side of the road and advertise. This practice, known as “curbstoning,” uses public streets as both storage and showroom and can have far-reaching negative effects on both individual buyers, communities, and the state as a whole – increasing traffic congestion, accidents, and pollution while putting unsafe vehicles on the road, costing New Yorkers hard-earned cash and depriving the State of much-needed revenue.

Many curbstoners advertise their illicit wares through classified ads hoping to lure in more victims. The internet has proved to be a prime hunting ground for this practice, as experts estimate that between 20-80% of online used car classified ads are posted by curbstoners.<sup>2</sup> After confirming that curbstoning is alive and well in New York, State Senator Jeffrey D. Klein and Assemblyman Francisco Moya passed S. 5955/A. 8009, which will crack down on unlicensed dealers and provide stiffer penalties for those who illegally sell their cars from the side of the road, ultimately providing New Yorkers better protection from this shady, illicit, and dangerous practice.

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<sup>1</sup> Edmunds.com [Q2 2015 Used Vehicle Market Report](http://static.ed.edmunds-media.com/unversioned/img/car-news/data-center/2015/august/used-car-report/used-car-report-q2.pdf), available at <http://static.ed.edmunds-media.com/unversioned/img/car-news/data-center/2015/august/used-car-report/used-car-report-q2.pdf>

<sup>2</sup> NBC News, *I-Team Exposes Illegal Car Dealer*, 8/8/2012 <http://www.nbcwashington.com/investigations/I-Team-Exposes-Illegal-Car-Dealer-165457176.html>

### **Key Findings:**

- Experts estimate that between 20-80% of online used car classified ads are posted by curbstoners.
- Because curbstoners operate illegally and without a license, we estimate that they cost New York State as much as \$56.4 million annually in lost sales tax revenue.
- In the span of a few days, an investigation of curbstoning on Craglist.com in the New York City area identified 93 likely curbstoners selling 277 individual vehicles.
  - One potential curbstoner, operating in the Bronx, posted 14 different vehicles for sale at the same time.
  - Out of 93 potential curbstoners, only eight have been cited in online scam reporting websites intended to warn consumers.
- Most curbstoners use prepaid, untraceable “burner phones” to operate; the investigation found that 85 percent of identified curbstoners posted a cell number as their contact information. Many were provided by companies notorious for supporting burner phones.

### **Current Law**

New York State currently distinguishes between private individuals who sell their used personal vehicles, and retail dealerships for whom selling cars is a business. While a private seller is less regulated than a dealer, they still must provide proof of ownership, an odometer and damage disclosure statement, proof of purchase, and proof that any outstanding liens against the vehicle have been satisfied.<sup>3</sup> This is to ensure that the vehicle is safe and not stolen. Anyone who sells any significant volume of cars, however, must be registered and licensed as a dealer with the New York State Department of Motor Vehicles. The law defines a dealer as one who:<sup>4</sup>

- Displays three vehicles or more for sale at one time on premises that they own or control
- Displays three vehicles or more for sale within one month at such location, or
- Sells five vehicles or more within a 12 month period

Registered dealers are regulated by the state of New York; they must keep records for each vehicle they sell, ensure that any vehicles sold are safe and road-worthy, and pay taxes to the State. Furthermore, they must provide proof of insurance as well as ownership for their vehicles, satisfactory premises on which to conduct business, and a surety bond ranging from \$10,000 to \$50,000 to ensure their legitimacy. The penalty for operating without a license is a \$1,000 fine.<sup>5</sup>

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<sup>3</sup> Private Party Paperwork, DMV.org, <http://www.dmv.org/ny-new-york/buy-sell/state-regulations.php>

<sup>4</sup> Dealer Licensing in New York, DMV.org, <http://www.dmv.org/ny-new-york/buy-sell/car-dealers/dealer-licensing.php>

<sup>5</sup> New York State Vehicle and Traffic Law, §415.

## **Curbstoning Legislation in New York State**

In June of 2015, Senator Klein and Assemblyman Moya introduced and passed in each of their respective houses S.5955/A.8009. This legislation would not only quadruple the penalties for operating as an unlicensed dealer, from \$1,000 to \$4,010, but it will also create additional penalties for unlicensed dealers that use public streets as their own personal storage space and showrooms. In addition to fines for operating without a license, S.5955/A.8009 makes it illegal for unlicensed dealers to park their vehicles along a public road or highway. As a further disincentive to curbstoning, this legislation will also fine curbstoners an additional \$300 per vehicle when they park along a public street.

On November 10, 2015 this legislation was moved to the Governor's desk for his signature. The Governor has 10 days by which to sign this crucial piece of legislation.

## **The Consequences of Curbstoning**

While curbstoners look to make a quick buck, curbstoning itself has a number of diverse and far-reaching consequences. Many stem from the physical fact that these illegal and unregistered dealers park their wares on public streets, monopolizing limited parking spaces with cars that may not move until they are sold. These parking spots, already scarce in many areas of the state, are intended for the use of residents, visitors, and workers. Instead, drivers must go out of their way to look for a parking space, increasing traffic congestion and pollution while making accidents more likely. Studies have shown that a surprising percentage of traffic is actually caused by people cruising around and looking for a parking spot. In a 2006 study, researchers interviewed drivers waiting at a stoplight in Manhattan, where 28% reported that they were looking for curbside parking. A similar study in Brooklyn found that an astonishing 45% of drivers were simply cruising until they could find a nearby parking space.<sup>6</sup> By taking up parking spaces that these drivers might otherwise use, curbstoners exacerbate an already challenging and complex infrastructure issue.

Other consequences stem from the sales of the vehicles themselves. Because curbstoners operate outside of the law, they are both unregulated and untaxed. The State has no way of ensuring that the cars sold by curbstoners are safe, or even if they are legally owned. While some are stolen and then sold to unwitting buyers, many others are salvaged or flood-damaged – dangerous vehicles that put the lives of the buyer and their family at risk every time they drive. Curbstoners often acquire damaged or totaled cars through an auction, conduct minimal repairs so that the car appears operational, and then sell it a significantly increased price. David Hyatt, vice president of public affairs for the National Automobile Dealers Association, warns that the hidden damage concealed in these vehicles, “could be structural, mechanical, or even electronic, which is often harder to detect... Nowadays, it's not just a bent frame used car shoppers have to watch out for. It could be a flood-damaged vehicle, a faulty computer connection and sensor or an empty airbag

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<sup>6</sup> Shoup, Donald [Cruising for Parking](http://shoup.bol.ucla.edu/CruisingForParkingAccess.pdf), University of California, Los Angeles, Spring 2007, p. 21; available at <http://shoup.bol.ucla.edu/CruisingForParkingAccess.pdf>

module that pose safety hazards.”<sup>7</sup> These dangerous deficiencies not only cost the vehicle’s new owner thousands of dollars to fix, but actively put them in harm’s way. In a 2008, crash causation survey, the US Department of Transportation estimated that vehicle malfunction had caused nearly 45,000 crashes resulting in fatality or injury over the previous 18 months.<sup>8</sup>

Finally, because the cars sold by curbstoners flouting the law are untaxed, the State loses significant revenue that it would otherwise gain from used car sales. In New York, the sales tax rate can vary between localities. The state itself collects 4% of total sales, while counties and cities impose their own local sales taxes, ranging from an additional 3% in some upstate counties to 4.875% in New York City, which includes a .375% Metropolitan Commuter Transportation District sales tax. This means that the total sales tax in New York State ranges from 7% to 8.875%, depending on location.<sup>9</sup> And while we don’t know exactly how many curbstoners ply their dangerous trade in New York State, or how many cars they sell illegally, we can estimate the impact that curbstoners are having on New York’s tax revenue.

Based on Edmunds.com’s estimate of 9.5 million used car sales nationwide in the second quarter of 2015, we can assume that roughly 38 million used cars will be sold this year. New York, with 6.2% of the country’s population,<sup>10</sup> might expect to see 2.35 million of those sales. Using the lower range of projections, that 20% of used car classifieds are placed by curbstoners, we can estimate that approximately 470,000 curbstoned vehicles are sold in New York State annually. If the average curbstoned vehicle sells for \$3,000 (significantly lower than the Edmunds.com report’s average used car price of \$18,800),<sup>11</sup> we can estimate that those sales total \$1.41 billion annually. With the 4% state sales tax rate, this could mean as much as \$56,400,000 per year in lost taxes to New York State. Collectively, cities and counties statewide would see a similar amount of revenue lost to curbstoners every year as well.

But New Yorkers aren’t the only ones getting fleeced by curbstoners – other states have identified this as a serious problem as well. For example, in 2014 California officials arrested a curbstoner named Mohammad A. Sheikh on 12 felony counts of perjury and filing false information. Over the course of the investigation, they found that he had purchased and sold some 1,250 vehicles throughout his criminal career, valued at over \$2.8 million. Many had salvaged titles – meaning they had been totaled and written off by insurance companies. Unfortunately, without this crucial new legislation, curbstoners operating throughout New York may be just as prolific.

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<sup>7</sup> Voelcker, John The Latest Threat to Carbuyer Safety: The Evil of ‘Curbstoning’, The Car Connection, 4/21/2010 [http://www.thecarconnection.com/news/1044403\\_latest-threat-to-carbuyer-safety-the-evil-of-curbstoning](http://www.thecarconnection.com/news/1044403_latest-threat-to-carbuyer-safety-the-evil-of-curbstoning)

<sup>8</sup> US DOT National Motor Vehicle Crash Causation Survey, July 2008, p.26 <http://www-nrd.nhtsa.dot.gov/Pubs/811059.PDF>

<sup>9</sup> Publication 718: New York State Sales and Use Tax Rates by Jurisdiction (effective December 1, 2015), NYS Department of Taxation and Finance, available at <https://www.tax.ny.gov/pdf/publications/sales/pub718.pdf>

<sup>10</sup> 2014 Census, <http://www.census.gov/popest/about/terms.html>

<sup>11</sup> Edmunds.com Q2 2015 Used Vehicle Market Report

## **Online Investigation**

In order to determine how prevalent curbstoning might be in New York, the Offices of Senator Klein and Assemblyman Moya conducted an online investigation into potential curbstoners posting online classified ads to ensnare victims. The results were deeply unsettling.

### ***Methodology***

Because curbstoners operate under the radar, it can be difficult to identify them. The investigation focused on Craigslist, the online classified ads website, and sought sellers who had multiple posts offering different vehicles for sale. Because Craigslist is an anonymous website, the investigation sought to match posts by the same seller based on the contact information (most likely a phone number) that they provided.

One of the categories that Craigslist offers is “Used Cars and Trucks,” which can be further narrowed by selecting a “for sale by owner” option, which will filter out all of the ads tagged as posted by an auto dealer. Within this category, the investigation recorded details from 1,050 Craigslist postings divided evenly across the five boroughs of New York City. In order to ensure some diversity, recordings for each borough were split across multiple days. For each post, the post date, post url, post title, asking price, contact name, and contact number were recorded. Furthermore, though the posts were all drawn from the “for sale by owner” category, it was clear from some of the pictures provided that many vehicles were actually on a used car lot and being sold by a dealer. If it was apparent that it was the case, this information was also recorded. Some posts were for vehicles located outside of New York State, and these were eliminated from the data set. Thirty four posts did not provide a contact number and these were removed as well.

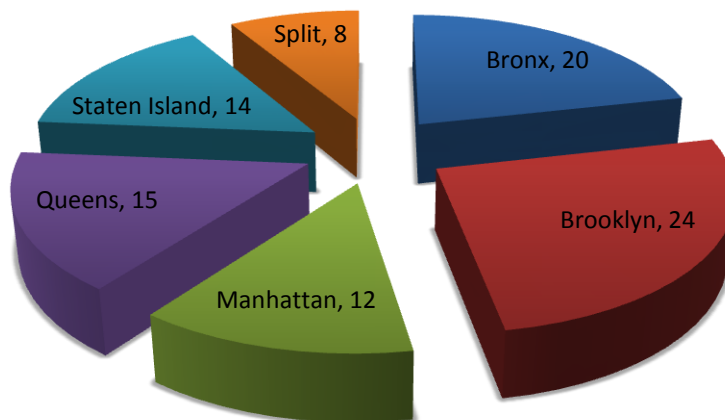
With all of the above information recorded, posts were then matched by the contact number that the poster provided. Numbers which did not show up attached to multiple postings were determined as likely to belong to legitimate private sellers and discarded. This left 437 posts which belonged to telephone numbers that had appeared more than once. The post title (usually a vehicle make, model, and age) and the asking price of posts attached to matching numbers were then compared in order to eliminate posters who had put up multiple ads for the same vehicle, as they were also likely a legitimate private seller. The remaining 384 posts, which belonged to 127 distinct telephone numbers, were then examined more closely.

Because so many posters had been identified as dealers claiming to be private owners, these remaining numbers were searched to determine if they belonged to a registered used car dealership. This eliminated another 34 numbers, leaving 277 postings by potential curbstoners attached to 93 different telephone numbers.

### ***Results***

These potential curbstoners were strewn throughout the city, but they seemed to concentrate in Brooklyn and The Bronx, where nearly half of them posted their ads (44 out of 93). Each borough had a significant presence, though there were eight numbers that were attached to postings in more than one borough.

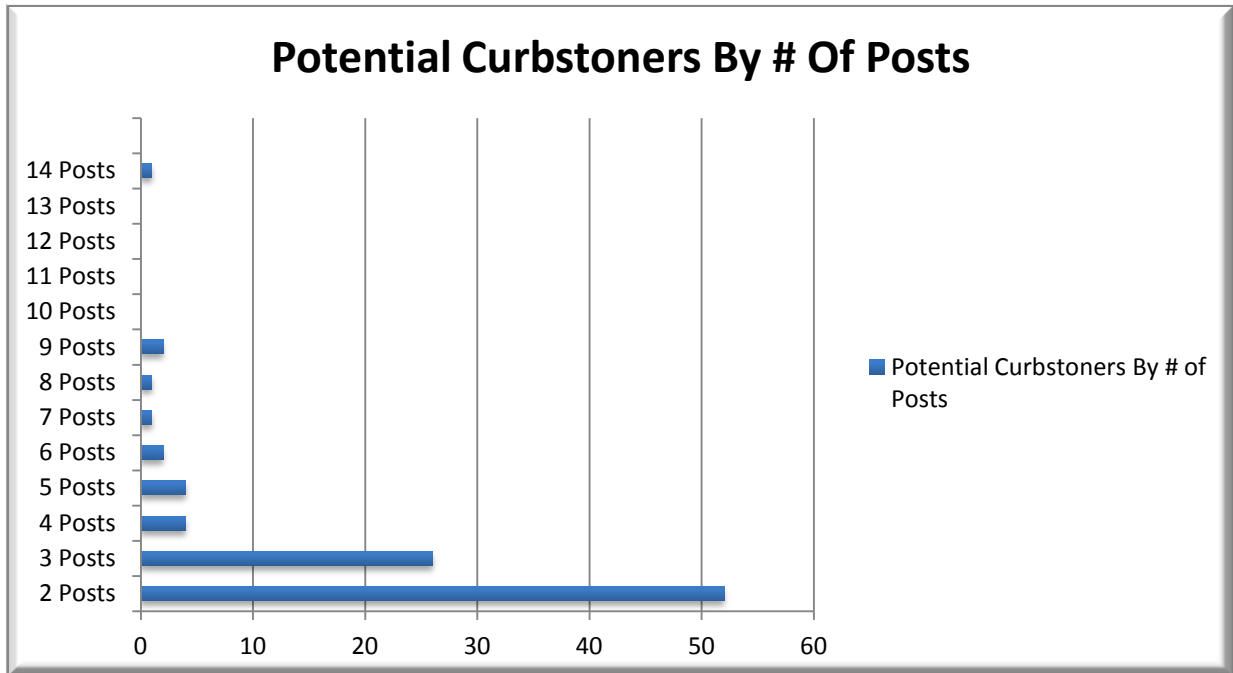
## # Of Potential Curbstoners By Borough



Most of these 93 potential curbstoners were only connected to advertisements for two or three separate cars. While these individuals might not have been breaking the law, posting multiple cars within just a few days of each other indicates that at the very least they may potentially be curbstoners. If they posted one vehicle every week, for instance, they would be operating illegally after just one month without a dealership license. However, 11 of the duplicate phone numbers corresponded to five or more distinct vehicles, meaning that their owners were required by law to be licensed. One number, belonging to an individual in The Bronx who did not post any other identifying information, was listed on posts for 14 different used cars. These cars ranged from a 2002 Chevrolet Astro minivan selling for just \$1,800 dollars to a 2008 GMC Yukon SLT with an asking price of \$13,900. When selling to a private party, this GMC's Kelly Blue Book value with a standard package and over 100,000 miles is between \$17,000 and \$20,000, depending on its condition.<sup>12</sup> The Chevrolet Astro was valued at \$2,000 to \$3,000 depending on condition.<sup>13</sup> This disparity demonstrates another tool which curbstoners use to attract their victims – selling cars for significantly less than they would be worth if they were being sold through a reputable source.

<sup>12</sup> Kelly Blue Book website, 9/10/2015 <http://www.kbb.com/gmc/yukon/2008-gmc-yukon/slt-sport-utility-4d/?category=&intent=trade-in-sell&pricetype=private-party&condition=very-good&persistedcondition=very-good&quizconditions=&options=&path=&vehicleid=347806&mileage=100001>

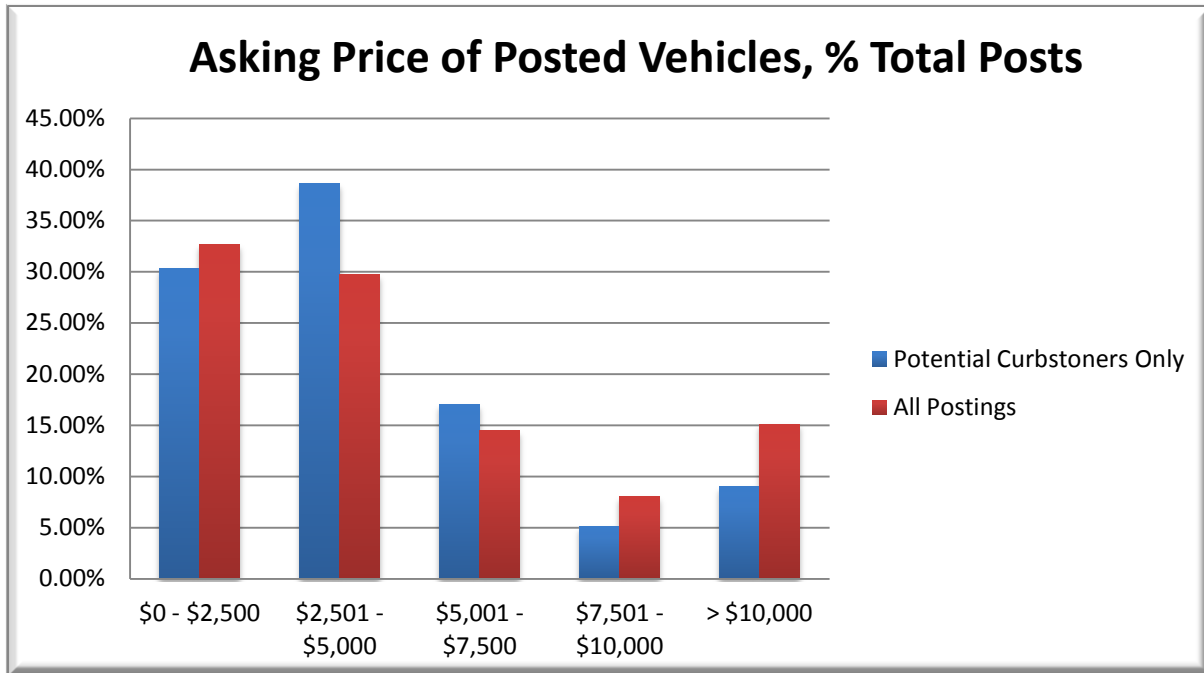
<sup>13</sup> Kelly Blue Book website, 9/10/2015 <http://www.kbb.com/chevrolet/astro-passenger/2002-chevrolet-astro-passenger/minivan-3d/?condition=excellent&vehicleid=3563&intent=trade-in-sell&mileage=143868&pricetype=private-party&persistedcondition=excellent>



Nevertheless, an individual selling even two cars at any given time is suspicious, especially given that all of the posting information was recorded over a two week period. And while it is possible that any of the 11 individuals selling five or more vehicles could be appropriately registered, it seems much more likely, given that all of the provided numbers were checked for business connections, that they are breaking the law. In fact, only eight of the 93 numbers were actually cited on various online scams reporting websites designed to warn people against getting ripped off.

As mentioned above, curbstoners often try to unload their illicit merchandise by making offers too good for the buyer to refuse. Furthermore, they tend to sell cheaper vehicles and therefore target a younger, poorer, more desperate audience. Unfortunately, these are the very people who can least afford to lose the hard-earned savings that they spend on a car that may be instrumental in getting them to and from work. When curbstoned lemons break down, even if they do not injure the driver, repairs will cost the owner a significant amount of money and the ensuing lack of transportation may also cost the owner a job or a chance at employment.





Unfortunately, victims of curbstoning often have very little recourse once they discover that they have been duped. Most curbstoners do not ever put the titles to the cars they sell in their own names, meaning that they are impossible to track through the vehicle’s ownership records. Furthermore, most of the numbers that appeared on multiple postings belonged to mobile phones (79 out of 93, or 85%, were cell phones). Many of these cell phone numbers appeared to be issued by companies notorious for providing “burner” pre-paid disposable phones often favored by criminals or those involved in suspicious activities.

The sum of the asking prices for the 277 vehicles identified as being sold by potential curbstoners was \$1,486,491 – and these posts were only collected over a few days from a single website. Nevertheless, these vehicles alone, if they are all being sold illegally, cost New York State nearly \$60,000 in lost sales taxes; and the lost taxes to New York City’s municipal government, with its 4.875% local tax rate, amount to another \$72,500. If these results are extrapolated across the entire year, they reveal that New York State and New York City are each losing millions of dollars in tax revenue annually due to curbstoning activity on Craigslist.com alone.

### **Undercover Investigation**

The investigation dug deeper, to confirm that the process worked to identify curbstoners and to identify curbstoning practices. Investigators contacted posters who had been identified as potential curbstoners, and set up appointments to see the vehicles and determine if there were other vehicles for sale. The very first curbstoner contacted for the investigation, “George,” exemplifies the dubious practices by which he and his associates operate.

“George” had posted nine separate cars for sale on Craigslist over the course of the investigation. However, when the investigator contacted him they had all been sold. Instead, “George” offered

20 other cars that he was selling. The investigator met “George” to view the cars, which were parked in twos and threes on several different streets and bore license plates from across the country. The investigator observed “George” removing parking tickets from the vehicles and discarding them, while boasting that the cars did not remain in his possession long enough for them to get booted, and explaining that because the cars are not in his name, he is never fined. The investigator inquired about a grey Toyota Prius, and a green Toyota Prius with a dented bumper. When the investigator inquired about the damage, “George” supplied no explanation and immediately offered to decrease the price by \$900. “George” and the investigator agreed on a time to come back and test drive the vehicles.

However, when the investigator returned four days later, “George” informed him that the green Prius had been sold, but that the grey Prius remained, as well as a new addition, a red 2006 model. The investigator met “George’s” brother, “Demitri,” a few blocks from the previous location and saw that the cars had been moved. Despite the fact that the remaining grey Prius was sporting a different license plate, the investigator was assured it was the same car. The investigator and “Demitri” took the red Prius for a test drive, before which the investigator waited while “Demitri” put his car in the vacated spot so that the parking space would not be taken. When asked about the vehicle’s history, “Demitri” claimed that it had been bought at an out-of-state auction and the information was not available. The title, however, stated that the registration had not been reissued because of unpaid taxes, and that the vehicle had been registered to an auto dealer in Pennsylvania with no online presence.

This single interaction demonstrates nearly all of the tools available in a curbstoner’s arsenal. “George” and “Demitri” buy cars cheaply from auctions, and provide no history of the car to the buyer. When asked about history and damages, offer a deal too good to refuse but provide no information. They park dozens of suspect, damaged cars on busy streets and, in order to evade detection, change their license plates on a regular basis. Curbstoners also do not register the cars in their own name, thereby not only avoiding parking tickets but also making the cars nearly impossible to track. All told, each curbstoner leaves dozens, if not hundreds, of victims with dangerous, untraceable vehicles, while avoiding any penalties or fines and blatantly breaking the law.

## **Solution**

Curbstoning is clearly all-too-common in New York. With more than one in four (26%) of Craigslist classifieds advertising cars “for sale by owner” likely placed by an unregistered, illegal dealer, it is nearly impossible for consumers to know who to trust. Not only is it likely that they will be sold a car that may be stolen or damaged, but that car could break down at any time to disastrous effect. It is equally clear that the existing penalty for curbstoning – a simple \$1,000 fine, is not sufficient to deter the proliferation of these criminals as they take advantage of the internet and other anonymous technologies for their nefarious ends.

Through the efforts of Senator Klein and Assemblyman Moya, this common-sense legislation is the only way to crack down on an epidemic that is affecting communities in New York State and across the country. That is why we are hopeful that the Governor will sign S.5955/A.8009 into law and protect all New Yorkers and the communities that they live in.