

7087

I N S E N A T E

April 27, 2012

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

AN ACT to amend the general business law and the agriculture and markets law, in relation to the advertising medium for motor fuel sales

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new section
2 396-ff to read as follows:

3 S 396-FF. ADVERTISING MEDIUM; MOTOR FUEL SALES. 1. THE TERM "ADVERTIS-
4 ING MEDIUM," AS USED IN THIS SECTION, SHALL MEAN A STREET SIGN, WHICH IS
5 AT LEAST SIX FEET HIGH AND FOUR FEET WIDE AND AT LEAST EIGHT FEET OFF
6 THE GROUND.

7 2. A. IN THE EVENT THAT THE SAME GRADE OF MOTOR FUEL IS SOLD AT
8 DIFFERENT PRICES FROM ANY SINGLE PLACE OF BUSINESS, AND THE PRICES DEVI-
9 ATE BY MORE THAN SEVEN PERCENT FOR THE SAME GRADE OF MOTOR FUEL, THEN
10 THE PLACE OF BUSINESS MUST HAVE AN ADVERTISING MEDIUM THAT COMPLIES WITH
11 THIS SECTION AND WHICH DISPLAYS THE HIGHER OF THE PRICES OFFERED FOR
12 THAT GRADE OF MOTOR FUEL.

13 B. THIS SUBDIVISION SHALL NOT APPLY TO DISCOUNTS OR PRICE REDUCTIONS
14 NOT AVAILABLE TO THE GENERAL PUBLIC, INCLUDING, BUT NOT LIMITED TO,
15 DISCOUNTS OR PRICE REDUCTIONS PROVIDED PURSUANT TO AWARDS, REWARDS,
16 LOYALTY, OR PROMOTIONAL PROGRAMS.

17 3. AN ADVERTISING MEDIUM REQUIRED PURSUANT TO THIS SECTION MUST BE
18 CLEARLY VISIBLE FROM EACH STREET OR HIGHWAY WHICH HAS AN ACCESS POINT TO
19 THE PLACE OF BUSINESS. ANY AND ALL INFORMATION REQUIRED TO BE INCLUDED
20 ON SUCH ADVERTISING MEDIUM PURSUANT TO THIS SECTION SHALL BE POSTED OR
21 MAINTAINED IN A CLEAR AND CONSPICUOUS MANNER.

22 4. ALL LETTERS, WORDS, FIGURES, OR NUMERALS WHICH ARE PART OF THE
23 ADVERTISING MEDIA REQUIRED BY SUBDIVISION TWO OF THIS SECTION SHALL HAVE
24 A HEAVY TYPE FACE OR STROKE, SHALL BE CLEARLY VISIBLE, AND OF A COLOR OR
25 TINT THAT WILL CONTRAST THE LETTERS, WORDS, FIGURES, OR NUMERALS WITH
26 THE BACKGROUND OF THE ADVERTISING MEDIA. ANY FONT USED PURSUANT TO THIS
27 SECTION MUST BE AT LEAST SIX INCHES IN HEIGHT. THE HEIGHT OF THE

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

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1 LETTERS, FIGURES, AND NUMERALS, EXCEPT THE LETTER "1" AND NUMERAL ONE,
2 SHALL NOT BE MORE THAN TWICE THE WIDTH.

3 5. A. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION SHALL
4 SUBJECT A PERSON, FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY
5 MOTOR FUEL TO THE PUBLIC TO A CIVIL PENALTY OF FIVE HUNDRED DOLLARS FOR
6 A FIRST OFFENSE. SUBSEQUENT OFFENSE SHALL RESULT IN A FINE OF ONE THOU-
7 SAND DOLLARS. UPON A THIRD OFFENSE, NON-COMPLIANCE SHALL ADDITIONALLY
8 RESULT IN THE BUSINESS BEING SHUT DOWN FOR A PERIOD OF TEN DAYS OR UNTIL
9 THE BUSINESS COMES WITHIN COMPLIANCE, WHICHEVER IS LATER.

10 B. THE PROVISIONS OF THIS SECTION MAY BE ENFORCED CONCURRENTLY BY THE
11 DIRECTOR OF A MUNICIPAL CONSUMER AFFAIRS OFFICE, OR BY THE TOWN ATTOR-
12 NEY, CITY CORPORATION COUNSEL, OR OTHER LAWFUL DESIGNEE OF A MUNICI-
13 PALITY OR LOCAL GOVERNMENT, AND ALL MONEYS COLLECTED UNDER THIS SECTION
14 SHALL BE RETAINED BY SUCH MUNICIPALITY OR LOCAL GOVERNMENT.

15 6. A. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON,
16 FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY MOTOR FUEL TO THE
17 PUBLIC OPERATING WITHIN THE POLITICAL SUBDIVISION THAT HAS ALREADY
18 ENACTED AND CONTINUES IN EFFECT A LOCAL LAW, ORDINANCE, RULE OR REGU-
19 LATION IN SUBSTANTIAL CONFORMITY WITH THIS SECTION. THE PROVISIONS OF
20 THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT IN ANY WAY THE AUTHORITY OF
21 A POLITICAL SUBDIVISION TO ENACT, IMPLEMENT AND CONTINUE TO ENFORCE ANY
22 AMENDMENTS THERETO AFTER THE EFFECTIVE DATE OF THIS SECTION. THE
23 PROVISIONS OF THIS SECTION SHALL BE ENFORCED IN THE COUNTIES OUTSIDE OF
24 THE CITY OF NEW YORK BY THE COUNTY OR CITY DIRECTOR OF WEIGHTS AND MEAS-
25 URES, AS THE CASE MAY BE, AND IN THE CITY OF NEW YORK BY THE DEPARTMENT
26 OF CONSUMER AFFAIRS.

27 B. ANY POLITICAL SUBDIVISION MAY, BY ORDINANCE, MODIFY PROVISIONS OF
28 THIS SECTION FOR SPECIFIED GEOGRAPHIC AREAS FOR SCENIC OR HISTORIC PRES-
29 ERVATION PURPOSES UPON APPROVAL OF SUCH MODIFICATION BY THE COMMISSIONER
30 OF AGRICULTURE AND MARKETS.

31 C. ANY POLITICAL SUBDIVISION MAY, BY ORDINANCE, LOCAL LAW, OR LOCAL
32 REGULATION CREATE ALTERNATE SIGNAGE SIZE AND FONT REQUIREMENTS IF THE
33 REQUIREMENTS CONTAINED IN THIS SECTION WOULD VIOLATE LOCAL ZONING RULES,
34 REGULATIONS, OR ORDINANCES.

35 7. NOTHING IN THIS SECTION SHALL APPLY TO OR INTERFERE WITH SIGNS OR
36 PLACARDS REQUIRED TO BE POSTED PURSUANT TO SUBDIVISION FIVE OF SECTION
37 ONE HUNDRED NINETY-TWO OF THE AGRICULTURE AND MARKETS LAW.

38 8. NOTHING IN THIS SECTION PROHIBITS ANY PERSON, FIRM OR CORPORATION
39 WHO HAS POSTED OR DISPLAYED A SIGN OR ADVERTISING MEDIUM IN COMPLIANCE
40 WITH THIS CHAPTER FROM DISPLAYING ADDITIONAL SIGNS OR ADVERTISING MEDIA,
41 SO LONG AS THE ADDITIONAL SIGNS OR ADVERTISING MEDIA ARE OF SMALLER SIZE
42 THAN THE MEDIA REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS SECTION AND
43 THE ADDITIONAL SIGNS OR MEDIA DO NOT OBSTRUCT OR INTERFERE WITH THE
44 REQUIRED ADVERTISING MEDIUM, WHICH STATE EITHER:

45 A. THE AMOUNT OF DISCOUNT IN CENTS OR DOLLARS PER GALLON, OR

46 B. THE PRICE OF ONE OR MORE BRANDS OR GRADES OF MOTOR FUEL SOLD OR
47 OFFERED FOR SALE, PROVIDED THE CONDITIONS AND ANY LIMITATIONS OF THE
48 DISCOUNT OR PRICE OF THE BRAND OR GRADE OF MOTOR FUEL ARE INCLUDED IN
49 THE ADDITIONAL ADVERTISING MEDIA IN LETTERS NOT LESS THAN ONE-THIRD THE
50 SIZE OF THE NUMERALS INDICATING THE DISCOUNT OR PRICE.

51 S 2. Subparagraph (iii) of paragraph a of subdivision 5 of section 192
52 of the agriculture and markets law, as amended by chapter 101 of the
53 laws of 1986, is amended and a new subparagraph (iv) is added to read as
54 follows:

55 (iii) where a multiple product dispensing device is capable of
56 dispensing multiple products at multiple prices, then the selling price

1 per gallon [may] SHALL be posted thereon with numerals at least one-half
2 that height and one-half that width required by subparagraph (i) of this
3 paragraph, although numerals representing tenths of a cent may be
4 displayed at no less than one-half those dimensions which disclose the
5 selling price per gallon of such motor fuel dispensed therefrom[.]; OR

6 (IV) WHERE A DISCOUNT FOR CASH IS OFFERED, AT LEAST ONE SIGN OR LABEL
7 SHALL BE CONSPICUOUSLY DISPLAYED ON THE DISPENSER INDICATING THE DIFFER-
8 ENCE IN AMOUNT PER GALLON IN NUMERALS NOT LESS THAN ONE-HALF INCH HIGH
9 AND LABELING THE DIFFERENCES IN LETTERS OF THE SAME SIZE FOR CASH AND
10 CREDIT CUSTOMERS.

11 S 3. The agriculture and markets law is amended by adding a new
12 section 192-h to read as follows:

13 S 192-H. ADVERTISING MEDIUM; MOTOR FUEL SALES. 1. THE TERM "ADVERTIS-
14 ING MEDIUM," AS USED IN THIS SECTION, SHALL MEAN A STREET SIGN, WHICH IS
15 AT LEAST SIX FEET HIGH AND FOUR FEET WIDE, AND AT LEAST EIGHT FEET OFF
16 THE GROUND.

17 2. A. IN THE EVENT THAT THE SAME GRADE OF MOTOR FUEL IS SOLD AT
18 DIFFERENT PRICES FROM ANY SINGLE PLACE OF BUSINESS, AND THE PRICES DEVI-
19 ATE BY MORE THAN SEVEN PERCENT FOR THE SAME GRADE OF MOTOR FUEL, THEN
20 THE PLACE OF BUSINESS MUST HAVE AN ADVERTISING MEDIUM THAT COMPLIES WITH
21 THIS SECTION AND WHICH DISPLAYS THE HIGHER OF THE PRICES OFFERED FOR
22 THAT GRADE OF MOTOR FUEL.

23 B. THIS SUBDIVISION SHALL NOT APPLY TO DISCOUNTS OR PRICE REDUCTIONS
24 NOT AVAILABLE TO THE GENERAL PUBLIC, INCLUDING, BUT NOT LIMITED TO,
25 DISCOUNTS OR PRICE REDUCTIONS PROVIDED PURSUANT TO AWARDS, REWARDS,
26 LOYALTY, OR PROMOTIONAL PROGRAMS.

27 3. AN ADVERTISING MEDIUM REQUIRED PURSUANT TO THIS SECTION MUST BE
28 CLEARLY VISIBLE FROM EACH STREET OR HIGHWAY WHICH HAS AN ACCESS POINT TO
29 THE PLACE OF BUSINESS. ANY AND ALL INFORMATION REQUIRED TO BE INCLUDED
30 ON SUCH ADVERTISING MEDIUM PURSUANT TO THIS SECTION SHALL BE POSTED OR
31 MAINTAINED IN A CLEAR AND CONSPICUOUS MANNER.

32 4. ALL LETTERS, WORDS, FIGURES, OR NUMERALS WHICH ARE PART OF THE
33 ADVERTISING MEDIA REQUIRED BY SUBDIVISION TWO OF THIS SECTION SHALL HAVE
34 A HEAVY TYPE FACE OR STROKE, SHALL BE CLEARLY VISIBLE, AND OF A COLOR OR
35 TINT THAT WILL CONTRAST THE LETTERS, WORDS, FIGURES, OR NUMERALS WITH
36 THE BACKGROUND OF THE ADVERTISING MEDIA. ANY FONT USED PURSUANT TO THIS
37 SECTION MUST BE AT LEAST SIX INCHES IN HEIGHT. THE HEIGHT OF THE
38 LETTERS, FIGURES, AND NUMERALS, EXCEPT THE LETTER "L" AND NUMERAL ONE,
39 SHALL NOT BE MORE THAN TWICE THE WIDTH.

40 5. A. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION SHALL
41 SUBJECT A PERSON, FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY
42 MOTOR FUEL TO THE PUBLIC TO A CIVIL PENALTY OF FIVE HUNDRED DOLLARS FOR
43 A FIRST OFFENSE. SUBSEQUENT OFFENSE SHALL RESULT IN A FINE OF ONE THOU-
44 SAND DOLLARS. UPON A THIRD OFFENSE, NON-COMPLIANCE SHALL ADDITIONALLY
45 RESULT IN THE BUSINESS BEING SHUT DOWN FOR A PERIOD OF TEN DAYS OR UNTIL
46 THE BUSINESS COMES WITHIN COMPLIANCE, WHICHEVER IS LATER.

47 B. THE PROVISIONS OF THIS SECTION MAY BE ENFORCED CONCURRENTLY BY THE
48 DIRECTOR OF A MUNICIPAL CONSUMER AFFAIRS OFFICE, OR BY THE TOWN ATTOR-
49 NEY, CITY CORPORATION COUNSEL, OR OTHER LAWFUL DESIGNEE OF A MUNICI-
50 PALITY OR LOCAL GOVERNMENT, AND ALL MONEYS COLLECTED UNDER THIS SECTION
51 SHALL BE RETAINED BY SUCH MUNICIPALITY OR LOCAL GOVERNMENT.

52 6. THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS NECESSARY
53 OR APPROPRIATE TO CARRY OUT THE PROVISIONS OF THIS SECTION, AND SHALL
54 MAKE AVAILABLE ON THE DEPARTMENT'S WEBSITE A SUMMARY OF THE PROVISIONS
55 OF THIS SECTION AND ANY REGULATIONS PROMULGATED THEREUNDER.

1 7. A. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON,
2 FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY MOTOR FUEL TO THE
3 PUBLIC OPERATING WITHIN A POLITICAL SUBDIVISION THAT HAS ALREADY ENACTED
4 AND CONTINUES IN EFFECT A LOCAL LAW, ORDINANCE, RULES OR REGULATIONS IN
5 SUBSTANTIAL CONFORMITY WITH THIS SECTION. THE PROVISIONS OF THIS SECTION
6 SHALL NOT BE CONSTRUED TO LIMIT IN ANY WAY THE AUTHORITY OF A POLITICAL
7 SUBDIVISION TO ENACT, IMPLEMENT AND CONTINUE TO ENFORCE ANY AMENDMENTS
8 THERETO AFTER THE EFFECTIVE DATE OF THIS SECTION. THE PROVISIONS OF THIS
9 SECTION SHALL BE ENFORCED IN THE COUNTIES OUTSIDE OF THE CITY OF NEW
10 YORK BY THE COUNTY OR CITY DIRECTOR OF WEIGHTS AND MEASURES, AS THE CASE
11 MAY BE, AND IN THE CITY OF NEW YORK BY THE DEPARTMENT OF CONSUMER
12 AFFAIRS.

13 B. ANY POLITICAL SUBDIVISION MAY, BY ORDINANCE, MODIFY PROVISIONS OF
14 THIS SECTION FOR SPECIFIED GEOGRAPHIC AREAS FOR SCENIC OR HISTORIC PRES-
15 ERVATION PURPOSES UPON APPROVAL OF SUCH EXEMPTION BY THE COMMISSIONER.

16 C. ANY POLITICAL SUBDIVISION MAY, BY ORDINANCE, LOCAL LAW, OR LOCAL
17 REGULATION CREATE ALTERNATE SIGNAGE SIZE AND FONT REQUIREMENTS IF THE
18 REQUIREMENTS CONTAINED IN THIS SECTION WOULD VIOLATE LOCAL ZONING RULES,
19 REGULATIONS, OR ORDINANCES.

20 8. NOTHING IN THIS SECTION SHALL APPLY TO OR INTERFERE WITH SIGNS OR
21 PLACARDS REQUIRED TO BE POSTED PURSUANT TO SUBDIVISION FIVE OF SECTION
22 ONE HUNDRED NINETY-TWO OF THIS ARTICLE.

23 9. NOTHING IN THIS SECTION PROHIBITS ANY PERSON, FIRM OR CORPORATION
24 WHO HAS POSTED OR DISPLAYED A SIGN OR ADVERTISING MEDIUM IN COMPLIANCE
25 WITH THIS CHAPTER FROM DISPLAYING ADDITIONAL SIGNS OR ADVERTISING MEDIA,
26 SO LONG AS THE ADDITIONAL SIGNS OR ADVERTISING MEDIA ARE OF SMALLER SIZE
27 THAN THE MEDIA REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS SECTION AND
28 THE ADDITIONAL SIGNS OR MEDIA DO NOT OBSTRUCT OR INTERFERE WITH THE
29 REQUIRED ADVERTISING MEDIUM, WHICH STATE EITHER:

30 A. THE AMOUNT OF DISCOUNT IN CENTS OR DOLLARS PER GALLON, OR

31 B. THE PRICE OF ONE OR MORE BRANDS OR GRADES OF MOTOR FUEL SOLD OR
32 OFFERED FOR SALE, PROVIDED THE CONDITIONS AND ANY LIMITATIONS OF THE
33 DISCOUNT OR PRICE OF THE BRAND OR GRADE OF MOTOR FUEL ARE INCLUDED IN
34 THE ADDITIONAL ADVERTISING MEDIA IN LETTERS NOT LESS THAN ONE-THIRD THE
35 SIZE OF THE NUMERALS INDICATING THE DISCOUNT OR PRICE.

36 S 4. This act shall take effect on the thirtieth day after it shall
37 have become a law; provided that the commissioner of agriculture and
38 markets is authorized to promulgate any rules and regulations necessary
39 to implement this act on or before its effective date.