

7087--A

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I N   S E N A T E

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Introduced by Sens. ZELDIN, DILAN, FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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-xx to read as follows:  
3     S 396-XX. ADVERTISING MEDIUM; MOTOR FUEL SALES. 1. THE TERM "ADVERTIS-  
4     ING MEDIUM," AS USED IN THIS SECTION, SHALL MEAN A STREET SIGN LOCATED  
5     WITHIN TEN FEET OF THE MAIN ENTRANCE OF THE PLACE OF BUSINESS OR AS  
6     CLOSE AS PRACTICABLE.  
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: (I) COMPLIES  
11    WITH THIS SECTION; (II) DISPLAYS AT LEAST THE HIGHER OF THE PRICES  
12    OFFERED FOR THAT GRADE OF MOTOR FUEL; AND (III) IS A STREET SIGN, WHICH  
13    IS AT LEAST SIX FEET HIGH AND FOUR FEET WIDE AND AT LEAST EIGHT FEET OFF  
14    THE GROUND.  
15    B. IN THE EVENT THAT THE SAME GRADE OF MOTOR FUEL IS SOLD AT DIFFERENT  
16    PRICES FROM ANY SINGLE PLACE OF BUSINESS, AND THE PRICES DEVIATE BY LESS  
17    THAN SEVEN PERCENT FOR THE SAME GRADE OF MOTOR FUEL AND THE PLACE OF  
18    BUSINESS SOLELY DISPLAYS THE PRICE OFFERED FOR MOTOR FUEL TO CUSTOMERS  
19    PAYING THE LOWER OF THE PRICES OFFERED, THEN THE PLACE OF BUSINESS MUST,  
20    IN A CLEAR AND CONSPICUOUS MANNER, INCLUDE A NOTICE EXPLAINING THE  
21    CONDITIONS UNDER WHICH SUCH FUEL IS SOLD OR OFFERED FOR SALE AT A  
22    DIFFERENT PRICE. THE CONDITIONS OF THE PRICE REDUCTION SHALL BE POSTED  
23    USING WORDS WITH LETTERS NOT LESS THAN ONE-THIRD THE SIZE OF THE PRICE  
24    NUMERALS.

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

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1 C. PARAGRAPH B OF THIS SUBDIVISION SHALL NOT APPLY IF THE PLACE OF  
2 BUSINESS DISPLAYS THE HIGHER OF THE PRICES OFFERED FOR MOTOR FUEL.

3 D. THE ADVERTISING MEDIUM SHALL, TO THE EXTENT PRACTICABLE, BE CLEAR-  
4 LY VISIBLE FROM EACH STREET OR HIGHWAY WHICH HAS A MOTOR VEHICLE ACCESS  
5 POINT TO THE PLACE OF BUSINESS. WHEN THE PLACE OF BUSINESS IS SITUATED  
6 AT AN INTERSECTION, THE ADVERTISING MEDIUM REQUIRED PURSUANT TO THIS  
7 SECTION SHALL, TO THE EXTENT PRACTICABLE, BE CLEARLY VISIBLE FROM EACH  
8 STREET OF THE INTERSECTION. ALL INFORMATION REQUIRED TO BE INCLUDED ON  
9 SUCH ADVERTISING MEDIUM PURSUANT TO THIS SECTION SHALL BE POSTED OR  
10 MAINTAINED IN A CLEAR AND CONSPICUOUS MANNER. FOR THE PURPOSES OF THIS  
11 SECTION, MOTOR FUEL DOES NOT INCLUDE PROPANE.

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

16 3. ALL LETTERS, WORDS, FIGURES, OR NUMERALS WHICH ARE PART OF THE  
17 ADVERTISING MEDIA REQUIRED BY SUBDIVISION TWO OF THIS SECTION SHALL HAVE  
18 A HEAVY TYPE FACE OR STROKE, SHALL BE CLEARLY VISIBLE, AND OF A COLOR OR  
19 TINT THAT WILL CONTRAST THE LETTERS, WORDS, FIGURES, OR NUMERALS WITH  
20 THE BACKGROUND OF THE ADVERTISING MEDIA. THE HEIGHT OF THE LETTERS,  
21 FIGURES, AND NUMERALS, EXCEPT THE LETTER "L" AND NUMERAL ONE, SHALL NOT  
22 BE MORE THAN TWICE THE WIDTH.

23 4. A. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION SHALL  
24 SUBJECT A PERSON, FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY  
25 MOTOR FUEL TO THE PUBLIC TO A CIVIL PENALTY OF UP TO FIVE HUNDRED  
26 DOLLARS FOR A FIRST OFFENSE, UP TO ONE THOUSAND DOLLARS FOR A SECOND  
27 OFFENSE, AND UP TO TEN THOUSAND DOLLARS FOR A THIRD OR SUBSEQUENT  
28 OFFENSE.

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

34 5. A. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON,  
35 FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY MOTOR FUEL TO THE  
36 PUBLIC OPERATING WITHIN A POLITICAL SUBDIVISION THAT HAS ALREADY ENACTED  
37 AND CONTINUES IN EFFECT A LOCAL LAW, ORDINANCE, RULE OR REGULATION IN  
38 SUBSTANTIAL CONFORMITY WITH THIS SECTION. THE PROVISIONS OF THIS SECTION  
39 SHALL NOT BE CONSTRUED TO LIMIT IN ANY WAY THE AUTHORITY OF A POLITICAL  
40 SUBDIVISION TO ENACT, IMPLEMENT AND CONTINUE TO ENFORCE LOCAL LAWS AND  
41 REGULATIONS GOVERNING THE SALE OF MOTOR FUELS THAT WERE IN EFFECT PRIOR  
42 TO THE EFFECTIVE DATE OF THIS SECTION, OR TO ENACT, IMPLEMENT AND  
43 ENFORCE ANY AMENDMENTS THERETO AFTER THE EFFECTIVE DATE OF THIS SECTION.  
44 THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED IN THE COUNTIES OUTSIDE  
45 THE CITY OF NEW YORK BY THE COUNTY OR CITY DIRECTOR OF WEIGHTS AND MEAS-  
46 URES, AS THE CASE MAY BE, AND IN THE CITY OF NEW YORK BY THE DEPARTMENT  
47 OF CONSUMER AFFAIRS.

48 B. ANY POLITICAL SUBDIVISION MAY, BY ORDINANCE, EXEMPT SPECIFIED  
49 GEOGRAPHIC AREAS FOR THE PROVISIONS OF THIS SECTION FOR SCENIC OR  
50 HISTORIC PRESERVATION PURPOSES UPON APPROVAL OF SUCH EXEMPTION BY THE  
51 COMMISSIONER OF AGRICULTURE AND MARKETS.

52 C. ANY PERSON, FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY  
53 MOTOR FUEL TO THE PUBLIC OPERATING WITHIN A POLITICAL SUBDIVISION THAT  
54 HAS ENACTED A LOCAL ZONING ORDINANCE OR LOCAL LAW REGARDING ADVERTISING  
55 MEDIUMS THAT PREVENT COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION  
56 MAY APPLY TO THE COMMISSIONER OF AGRICULTURE AND MARKETS FOR AN

1 EXEMPTION FROM THE REQUIREMENTS OF THIS SECTION OR A MODIFIED COMPLIANCE  
2 SCHEME THAT ADDRESSES THE ISSUE PREVENTING COMPLIANCE WITH THE REQUIRE-  
3 MENTS OF THIS SECTION. THE COMMISSIONER OF AGRICULTURE AND MARKETS  
4 SHALL, FOLLOWING AN INVESTIGATION, AT HIS OR HER SOLE DISCRETION,  
5 APPROVE OR DENY THE REQUEST FOR AN EXEMPTION OR MODIFICATION.

6 6. NOTHING IN THIS SECTION SHALL APPLY TO SIGNS OR PLACARDS REQUIRED  
7 TO BE POSTED PURSUANT TO SUBDIVISION FIVE OF SECTION ONE HUNDRED NINE-  
8 TY-TWO OF THE AGRICULTURE AND MARKETS LAW.

9 7. NOTHING IN THIS SECTION PROHIBITS ANY PERSON, FIRM OR CORPORATION  
10 WHO HAS POSTED OR DISPLAYED A SIGN OR ADVERTISING MEDIUM IN COMPLIANCE  
11 WITH THIS SECTION FROM DISPLAYING ADDITIONAL PRICING SIGNS, PROVIDED  
12 THAT SUCH ADDITIONAL PRICING SIGNS ARE OF SMALLER SIZE THAN THE MEDIA  
13 REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS SECTION AND THE ADDITIONAL  
14 PRICING SIGNS DO NOT OBSTRUCT OR INTERFERE WITH THE REQUIRED ADVERTISING  
15 MEDIUM.

16 S 2. Subparagraph (iii) of paragraph a of subdivision 5 of section 192  
17 of the agriculture and markets law, as amended by chapter 101 of the  
18 laws of 1986, is amended to read as follows:

19 (iii) where a multiple product dispensing device is capable of  
20 dispensing multiple products at multiple prices, then the selling price  
21 per gallon [may] SHALL be posted thereon with numerals at least one-half  
22 that height and one-half that width required by subparagraph (i) of this  
23 paragraph, although numerals representing tenths of a cent may be  
24 displayed at no less than one-half those dimensions which disclose the  
25 selling price per gallon of such motor fuel dispensed therefrom.

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

28 S 192-H. ADVERTISING MEDIUM; MOTOR FUEL SALES. 1. THE TERM "ADVERTIS-  
29 ING MEDIUM," AS USED IN THIS SECTION, SHALL MEAN A STREET SIGN LOCATED  
30 WITHIN TEN FEET OF THE MAIN ENTRANCE OF THE PLACE OF BUSINESS OR AS  
31 CLOSE AS PRACTICABLE.

32 2. A. IN THE EVENT THAT THE SAME GRADE OF MOTOR FUEL IS SOLD AT  
33 DIFFERENT PRICES FROM ANY SINGLE PLACE OF BUSINESS, AND THE PRICES DEVI-  
34 ATE BY MORE THAN SEVEN PERCENT FOR THE SAME GRADE OF MOTOR FUEL, THEN  
35 THE PLACE OF BUSINESS MUST HAVE AN ADVERTISING MEDIUM THAT: (I) COMPLIES  
36 WITH THIS SECTION; (II) DISPLAYS AT LEAST THE HIGHER OF THE PRICES  
37 OFFERED FOR THAT GRADE OF MOTOR FUEL; AND (III) IS A STREET SIGN, WHICH  
38 IS AT LEAST SIX FEET HIGH AND FOUR FEET WIDE AND AT LEAST EIGHT FEET OFF  
39 THE GROUND.

40 B. IN THE EVENT THAT THE SAME GRADE OF MOTOR FUEL IS SOLD AT DIFFERENT  
41 PRICES FROM ANY SINGLE PLACE OF BUSINESS, AND THE PRICES DEVIATE BY LESS  
42 THAN SEVEN PERCENT FOR THE SAME GRADE OF MOTOR FUEL AND THE PLACE OF  
43 BUSINESS SOLELY DISPLAYS THE PRICE OFFERED FOR MOTOR FUEL TO CUSTOMERS  
44 PAYING THE LOWER OF THE PRICES OFFERED, THEN THE PLACE OF BUSINESS MUST,  
45 IN A CLEAR AND CONSPICUOUS MANNER, INCLUDE A NOTICE EXPLAINING THE  
46 CONDITIONS UNDER WHICH SUCH FUEL IS SOLD OR OFFERED FOR SALE AT A  
47 DIFFERENT PRICE. THE CONDITIONS OF THE PRICE REDUCTION SHALL BE POSTED  
48 USING WORDS WITH LETTERS NOT LESS THAN ONE-THIRD THE SIZE OF THE PRICE  
49 NUMERALS.

50 C. PARAGRAPH B OF THIS SUBDIVISION SHALL NOT APPLY IF THE PLACE OF  
51 BUSINESS DISPLAYS THE HIGHER OF THE PRICES OFFERED FOR MOTOR FUEL.

52 D. THE ADVERTISING MEDIUM REQUIRED PURSUANT TO THIS SECTION SHALL, TO  
53 THE EXTENT PRACTICABLE, BE CLEARLY VISIBLE FROM EACH STREET OR HIGHWAY  
54 WHICH HAS A MOTOR VEHICLE ACCESS POINT TO THE PLACE OF BUSINESS. WHEN  
55 THE PLACE OF BUSINESS IS SITUATED AT AN INTERSECTION, THE ADVERTISING  
56 MEDIUM SHALL, TO THE EXTENT PRACTICABLE, BE CLEARLY VISIBLE FROM EACH

1 STREET OF THE INTERSECTION. FOR THE PURPOSES OF THIS SECTION, MOTOR FUEL  
2 DOES NOT INCLUDE PROPANE.

3 E. THIS SUBDIVISION SHALL NOT APPLY TO DISCOUNTS OR PRICE REDUCTIONS  
4 NOT AVAILABLE TO THE GENERAL PUBLIC, INCLUDING, BUT NOT LIMITED TO,  
5 DISCOUNTS OR PRICE REDUCTIONS PROVIDED PURSUANT TO AN AWARDS, REWARDS,  
6 LOYALTY, OR PROMOTIONAL PROGRAM.

7 3. ALL LETTERS, WORDS, FIGURES, OR NUMERALS WHICH ARE PART OF THE  
8 ADVERTISING MEDIA REQUIRED BY SUBDIVISION TWO OF THIS SECTION SHALL HAVE  
9 A HEAVY TYPE FACE OR STROKE, SHALL BE CLEARLY VISIBLE, AND OF A COLOR OR  
10 TINT THAT WILL CONTRAST THE LETTERS, WORDS, FIGURES, OR NUMERALS WITH  
11 THE BACKGROUND OF THE ADVERTISING MEDIA. THE HEIGHT OF THE LETTERS,  
12 FIGURES, AND NUMERALS, EXCEPT THE LETTER "L" AND NUMERAL ONE, SHALL NOT  
13 BE MORE THAN TWICE THE WIDTH.

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18 OFFENSE, AND UP TO TEN THOUSAND DOLLARS FOR A THIRD OR SUBSEQUENT  
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21 DIRECTOR OF A MUNICIPAL CONSUMER AFFAIRS OFFICE, OR BY THE TOWN ATTOR-  
22 NEY, CITY CORPORATION COUNSEL, OR OTHER LAWFUL DESIGNEE OF A MUNICI-  
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25 C. ANY PERSON, FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY  
26 MOTOR FUEL TO THE PUBLIC OPERATING WITHIN A POLITICAL SUBDIVISION THAT  
27 HAS ENACTED A LOCAL ZONING ORDINANCE OR LOCAL LAW REGARDING ADVERTISING  
28 MEDIUMS THAT PREVENT COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION  
29 MAY APPLY TO THE COMMISSIONER FOR AN EXEMPTION FROM THE REQUIREMENTS OF  
30 THIS SECTION OR A MODIFIED COMPLIANCE SCHEME THAT ADDRESSES THE ISSUE  
31 PREVENTING COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION. THE  
32 COMMISSIONER SHALL, FOLLOWING AN INVESTIGATION, AT HIS OR HER SOLE  
33 DISCRETION, APPROVE OR DENY THE REQUEST FOR AN EXEMPTION OR MODIFICA-  
34 TION.

35 5. THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS NECESSARY  
36 OR APPROPRIATE TO CARRY OUT THE PROVISIONS OF THIS SECTION, AND SHALL  
37 MAKE AVAILABLE ON THE DEPARTMENT'S WEBSITE A SUMMARY OF THE PROVISIONS  
38 OF THIS SECTION AND ANY REGULATIONS PROMULGATED THEREUNDER.

39 6. A. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON,  
40 FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY MOTOR FUEL TO THE  
41 PUBLIC OPERATING WITHIN A POLITICAL SUBDIVISION THAT HAS ALREADY ENACTED  
42 AND CONTINUES IN EFFECT A LOCAL LAW, ORDINANCE, RULE OR REGULATION IN  
43 SUBSTANTIAL CONFORMITY WITH THIS SECTION. THE PROVISIONS OF THIS SECTION  
44 SHALL NOT BE CONSTRUED TO LIMIT IN ANY WAY THE AUTHORITY OF A POLITICAL  
45 SUBDIVISION TO ENACT, IMPLEMENT AND CONTINUE TO ENFORCE LOCAL LAWS AND  
46 REGULATIONS GOVERNING THE SALE OF MOTOR FUELS THAT WERE IN EFFECT PRIOR  
47 TO THE EFFECTIVE DATE OF THIS SECTION, OR TO ENACT, IMPLEMENT AND  
48 ENFORCE ANY AMENDMENTS THERETO AFTER THE EFFECTIVE DATE OF THIS SECTION.  
49 THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED IN THE COUNTIES OUTSIDE  
50 THE CITY OF NEW YORK BY THE COUNTY OR CITY DIRECTOR OF WEIGHTS AND MEAS-  
51 URES, AS THE CASE MAY BE, AND IN THE CITY OF NEW YORK BY THE DEPARTMENT  
52 OF CONSUMER AFFAIRS.

53 B. ANY POLITICAL SUBDIVISION MAY, BY ORDINANCE, EXEMPT SPECIFIED  
54 GEOGRAPHIC AREAS FOR THE PROVISIONS OF THIS SECTION FOR SCENIC OR  
55 HISTORIC PRESERVATION PURPOSES UPON APPROVAL OF SUCH EXEMPTION BY THE  
56 COMMISSIONER.

1 7. NOTHING IN THIS SECTION SHALL APPLY TO SIGNS OR PLACARDS REQUIRED  
2 TO BE POSTED PURSUANT TO SUBDIVISION FIVE OF SECTION ONE HUNDRED NINE-  
3 TY-TWO OF THIS ARTICLE.

4 8. NOTHING IN THIS SECTION PROHIBITS ANY PERSON, FIRM OR CORPORATION  
5 WHO HAS POSTED OR DISPLAYED A SIGN OR ADVERTISING MEDIUM IN COMPLIANCE  
6 WITH THIS SECTION FROM DISPLAYING ADDITIONAL PRICING SIGNS, PROVIDED  
7 THAT SUCH ADDITIONAL PRICING SIGNS ARE OF SMALLER SIZE THAN THE MEDIA  
8 REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS SECTION AND THE ADDITIONAL  
9 PRICING SIGNS DO NOT OBSTRUCT OR INTERFERE WITH THE REQUIRED ADVERTISING  
10 MEDIUM.

11 S 4. This act shall take effect on the one hundred eightieth day after  
12 it shall have become a law; provided that the commissioner of agricul-  
13 ture and markets is authorized to promulgate any rules and regulations  
14 necessary to implement this act on or before its effective date.