S T A T E  O F  N E W  Y O R K

9927--D

I N  A S S E M B L Y

April 24, 2012

Introduced by M. of A. DINOWITZ, P. RIVERA, PAULIN, JAFFEE, MAISEL, ROBERTS, ROSENTHAL, M. MILLER, WEISENBERG, SCARBOROUGH, COLTON, MONTESANO, GALEF, MILLMAN, McDONOUGH, LOSQUADRO, LAVINE, WEPRIN, GUNTHER, HOOPER, LATIMER -- Multi-Sponsored by -- M. of A. CALHOUN, CLARK, COOK, MARKEY, RA, SWEENEY, THIELE -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the general business law and the agriculture and markets law, in relation to specifying requirements for motor fuel advertising media

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

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

S 396-XX. ADVERTISING MEDIUM; MOTOR FUEL SALES. 1. THE TERM "ADVERTISING MEDIUM," AS USED IN THIS SECTION, SHALL MEAN A STREET SIGN LOCATED WITHIN TEN FEET OF THE MAIN ENTRANCE OF THE PLACE OF BUSINESS OR AS CLOSE AS PRACTICABLE.

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

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

LBD15327-07-2

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

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

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

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

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

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

B. THE PROVISIONS OF THIS SECTION MAY BE ENFORCED CONCURRENTLY BY THE DIRECTOR OF A MUNICIPAL CONSUMER AFFAIRS OFFICE, OR BY THE TOWN ATTORNEY, CITY CORPORATION COUNSEL, OR OTHER LAWFUL DESIGNEE OF A MUNICIPALITY OR LOCAL GOVERNMENT, AND ALL MONEYS COLLECTED UNDER THIS SECTION SHALL BE RETAINED BY SUCH MUNICIPALITY OR LOCAL GOVERNMENT.

5. A. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON, FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY MOTOR FUEL TO THE PUBLIC OPERATING WITHIN A POLITICAL SUBDIVISION THAT HAS ALREADY ENACTED AND CONTINUES IN EFFECT A LOCAL LAW, ORDINANCE, RULE OR REGULATION IN SUBSTANTIAL CONFORMITY WITH THIS SECTION. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT IN ANY WAY THE AUTHORITY OF A POLITICAL SUBDIVISION TO ENACT, IMPLEMENT AND CONTINUE TO ENFORCE LOCAL LAWS AND REGULATIONS GOVERNING THE SALE OF MOTOR FUELS THAT WERE IN EFFECT PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, OR TO ENACT, IMPLEMENT AND ENFORCE ANY AMENDMENTS THERETO AFTER THE EFFECTIVE DATE OF THIS SECTION. THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED IN THE COUNTIES OUTSIDE THE CITY OF NEW YORK BY THE COUNTY OR CITY DIRECTOR OF WEIGHTS AND MEAS-

URES, AS THE CASE MAY BE, AND IN THE CITY OF NEW YORK BY THE DEPARTMENT OF CONSUMER AFFAIRS.

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

C. ANY PERSON, FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY MOTOR FUEL TO THE PUBLIC OPERATING WITHIN A POLITICAL SUBDIVISION THAT HAS ENACTED A LOCAL ZONING ORDINANCE OR LOCAL LAW REGARDING ADVERTISING MEDIUMS THAT PREVENT COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION MAY APPLY TO THE COMMISSIONER OF AGRICULTURE AND MARKETS FOR AN EXEMPTION FROM THE REQUIREMENTS OF THIS SECTION OR A MODIFIED COMPLIANCE SCHEME THAT ADDRESSES THE ISSUE PREVENTING COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION. THE COMMISSIONER OF AGRICULTURE AND MARKETS SHALL, FOLLOWING AN INVESTIGATION, AT HIS OR HER SOLE DISCRETION, APPROVE OR DENY THE REQUEST FOR AN EXEMPTION OR MODIFICATION.

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

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

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

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

(IV) WHERE A CASH DISCOUNT IS OFFERED, AT LEAST ONE SIGN OR LABEL SHALL BE CONSPICUOUSLY DISPLAYED ON THE DISPENSER INDICATING THE PRICE PER GALLON OF THE FUEL AFTER THE CASH DISCOUNT. SUCH SIGN OR LABEL MUST DISPLAY SUCH PRICE IN LETTERS AND NUMERALS NOT LESS THAN ONE-HALF INCH HIGH.

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

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

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

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

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

D. THE ADVERTISING MEDIUM REQUIRED PURSUANT TO THIS SECTION SHALL, TO THE EXTENT PRACTICABLE, BE CLEARLY VISIBLE FROM EACH STREET OR HIGHWAY WHICH HAS A MOTOR VEHICLE ACCESS POINT TO THE PLACE OF BUSINESS. WHEN THE PLACE OF BUSINESS IS SITUATED AT AN INTERSECTION, THE ADVERTISING MEDIUM SHALL, TO THE EXTENT PRACTICABLE, BE CLEARLY VISIBLE FROM EACH STREET OF THE INTERSECTION. FOR THE PURPOSES OF THIS SECTION, MOTOR FUEL DOES NOT INCLUDE PROPANE.

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

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

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

B. THE PROVISIONS OF THIS SECTION MAY BE ENFORCED CONCURRENTLY BY THE DIRECTOR OF A MUNICIPAL CONSUMER AFFAIRS OFFICE, OR BY THE TOWN ATTORNEY, CITY CORPORATION COUNSEL, OR OTHER LAWFUL DESIGNEE OF A MUNICIPALITY OR LOCAL GOVERNMENT, AND ALL MONEYS COLLECTED UNDER THIS SECTION SHALL BE RETAINED BY SUCH MUNICIPALITY OR LOCAL GOVERNMENT.

C. ANY PERSON, FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY MOTOR FUEL TO THE PUBLIC OPERATING WITHIN A POLITICAL SUBDIVISION THAT HAS ENACTED A LOCAL ZONING ORDINANCE OR LOCAL LAW REGARDING ADVERTISING MEDIUMS THAT PREVENT COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION MAY APPLY TO THE COMMISSIONER FOR AN EXEMPTION FROM THE REQUIREMENTS OF THIS SECTION OR A MODIFIED COMPLIANCE SCHEME THAT ADDRESSES THE ISSUE PREVENTING COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION. THE COMMISSIONER SHALL, FOLLOWING AN INVESTIGATION, AT HIS OR HER SOLE DISCRETION, APPROVE OR DENY THE REQUEST FOR AN EXEMPTION OR MODIFICATION.

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

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

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

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

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

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