

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:

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 FIVE PERCENT FOR THE SAME GRADE OF MOTOR FUEL, THEN THE
10 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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38 DIRECTOR OF A MUNICIPAL CONSUMER AFFAIRS OFFICE, OR BY THE TOWN ATTOR-
39 NEY, CITY CORPORATION COUNSEL, OR OTHER LAWFUL DESIGNEE OF A MUNICI-
40 PALITY OR LOCAL GOVERNMENT, AND ALL MONEYS COLLECTED UNDER THIS SECTION
41 SHALL BE RETAINED BY SUCH MUNICIPALITY OR LOCAL GOVERNMENT.

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

52 5. 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 6. 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, RULE OR REGULATION 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 LOCAL LAWS AND
8 REGULATIONS GOVERNING THE SALE OF MOTOR FUELS THAT WERE IN EFFECT PRIOR
9 TO THE EFFECTIVE DATE OF THIS SECTION, OR TO ENACT, IMPLEMENT AND
10 ENFORCE ANY AMENDMENTS THERETO AFTER THE EFFECTIVE DATE OF THIS SECTION.
11 THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED IN THE COUNTIES OUTSIDE
12 THE CITY OF NEW YORK BY THE COUNTY OR CITY DIRECTOR OF WEIGHTS AND MEAS-
13 URES, AS THE CASE MAY BE, AND IN THE CITY OF NEW YORK BY THE DEPARTMENT
14 OF CONSUMER AFFAIRS.

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

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

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

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