

1752--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

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

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 ASSEM-
BLY, 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, THEN THE PLACE OF
9 BUSINESS MUST HAVE AN ADVERTISING MEDIUM THAT: (I) COMPLIES WITH THIS
10 SECTION; (II) DISPLAYS AT LEAST THE HIGHER OF THE PRICES OFFERED FOR
11 THAT GRADE OF MOTOR FUEL; AND (III) IS A STREET SIGN, WHICH IS AT LEAST
12 SIX FEET HIGH AND FOUR FEET WIDE AND AT LEAST EIGHT FEET OFF THE GROUND.
13 B. THE ADVERTISING MEDIUM SHALL, TO THE EXTENT PRACTICABLE, BE CLEARLY
14 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

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

LBD03110-03-3

1 MAINTAINED IN A CLEAR AND CONSPICUOUS MANNER. FOR THE PURPOSES OF THIS
2 SECTION, MOTOR FUEL DOES NOT INCLUDE PROPANE.

3 C. 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.

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

20 B. THE PROVISIONS OF THIS SECTION MAY BE ENFORCED CONCURRENTLY BY THE
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-
23 PALITY OR LOCAL GOVERNMENT, AND ALL MONEYS COLLECTED UNDER THIS SECTION
24 SHALL BE RETAINED BY SUCH MUNICIPALITY OR LOCAL GOVERNMENT.

25 5. A. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON,
26 FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY MOTOR FUEL TO THE
27 PUBLIC OPERATING WITHIN A POLITICAL SUBDIVISION THAT HAS ALREADY ENACTED
28 AND CONTINUES IN EFFECT A LOCAL LAW, ORDINANCE, RULE OR REGULATION IN
29 SUBSTANTIAL CONFORMITY WITH THIS SECTION. THE PROVISIONS OF THIS SECTION
30 SHALL NOT BE CONSTRUED TO LIMIT IN ANY WAY THE AUTHORITY OF A POLITICAL
31 SUBDIVISION TO ENACT, IMPLEMENT AND CONTINUE TO ENFORCE LOCAL LAWS AND
32 REGULATIONS GOVERNING THE SALE OF MOTOR FUELS THAT WERE IN EFFECT PRIOR
33 TO THE EFFECTIVE DATE OF THIS SECTION, OR TO ENACT, IMPLEMENT AND
34 ENFORCE ANY AMENDMENTS THERETO AFTER THE EFFECTIVE DATE OF THIS SECTION
35 SO LONG AS THE AMENDMENTS REMAIN IN SUBSTANTIAL CONFORMITY WITH THIS
36 SECTION. THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED IN THE COUN-
37 TIES OUTSIDE THE CITY OF NEW YORK BY THE COUNTY OR CITY DIRECTOR OF
38 WEIGHTS AND MEASURES, AS THE CASE MAY BE, AND IN THE CITY OF NEW YORK BY
39 THE DEPARTMENT OF CONSUMER AFFAIRS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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55 SUBJECT A PERSON, FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY
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1 DOLLARS FOR A FIRST OFFENSE, UP TO ONE THOUSAND DOLLARS FOR A SECOND
2 OFFENSE, AND UP TO TEN THOUSAND DOLLARS FOR A THIRD OR SUBSEQUENT
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4 B. THE PROVISIONS OF THIS SECTION MAY BE ENFORCED CONCURRENTLY BY THE
5 DIRECTOR OF A MUNICIPAL CONSUMER AFFAIRS OFFICE, OR BY THE TOWN ATTOR-
6 NEY, CITY CORPORATION COUNSEL, OR OTHER LAWFUL DESIGNEE OF A MUNICI-
7 PALITY OR LOCAL GOVERNMENT, AND ALL MONEYS COLLECTED UNDER THIS SECTION
8 SHALL BE RETAINED BY SUCH MUNICIPALITY OR LOCAL GOVERNMENT.

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

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

23 6. A. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON,
24 FIRM OR CORPORATION OFFERING FOR SALE OR SELLING ANY MOTOR FUEL TO THE
25 PUBLIC OPERATING WITHIN A POLITICAL SUBDIVISION THAT HAS ALREADY ENACTED
26 AND CONTINUES IN EFFECT A LOCAL LAW, ORDINANCE, RULE OR REGULATION IN
27 SUBSTANTIAL CONFORMITY WITH THIS SECTION. THE PROVISIONS OF THIS SECTION
28 SHALL NOT BE CONSTRUED TO LIMIT IN ANY WAY THE AUTHORITY OF A POLITICAL
29 SUBDIVISION TO ENACT, IMPLEMENT AND CONTINUE TO ENFORCE LOCAL LAWS AND
30 REGULATIONS GOVERNING THE SALE OF MOTOR FUELS THAT WERE IN EFFECT PRIOR
31 TO THE EFFECTIVE DATE OF THIS SECTION, OR TO ENACT, IMPLEMENT AND
32 ENFORCE ANY AMENDMENTS THERETO AFTER THE EFFECTIVE DATE OF THIS SECTION
33 SO LONG AS THE AMENDMENTS REMAIN IN SUBSTANTIAL CONFORMITY WITH THIS
34 SECTION. THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED IN THE COUN-
35 TIES OUTSIDE THE CITY OF NEW YORK BY THE COUNTY OR CITY DIRECTOR OF
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38 B. ANY POLITICAL SUBDIVISION MAY, BY ORDINANCE, EXEMPT SPECIFIED
39 GEOGRAPHIC AREAS FOR THE PROVISIONS OF THIS SECTION FOR SCENIC OR
40 HISTORIC PRESERVATION PURPOSES UPON APPROVAL OF SUCH EXEMPTION BY THE
41 COMMISSIONER.

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

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

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