

9548

I N   A S S E M B L Y

March 16, 2016

---

Introduced by M. of A. KAMINSKY, DINOWITZ, PAULIN, JAFFEE, COLTON, GALEF, LAVINE, WEPRIN, GUNTHER, HOOPER, BUCHWALD, SEPULVEDA, MONTESANO, SKOUFIS, THIELE, ZEBROWSKI, BARRETT, GOTTFRIED, ARROYO, LINARES -- Multi-Sponsored by -- M. of A. COOK, LENTOL, MAGEE, MARKEY, PERRY, ROBINSON, STECK, WEINSTEIN -- read once and referred to the Committee on Consumer Affairs and Protection

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, 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  
20    MAINTAINED IN A CLEAR AND CONSPICUOUS MANNER. FOR THE PURPOSES OF THIS  
21    SECTION, MOTOR FUEL DOES NOT INCLUDE PROPANE.  
22    C. THIS SUBDIVISION SHALL NOT APPLY TO DISCOUNTS OR PRICE REDUCTIONS  
23    NOT AVAILABLE TO THE GENERAL PUBLIC, INCLUDING, BUT NOT LIMITED TO,

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

LBD01557-01-5

1 DISCOUNTS OR PRICE REDUCTIONS PROVIDED PURSUANT TO AN AWARDS, REWARDS,  
2 LOYALTY, OR PROMOTIONAL PROGRAM.

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

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

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

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

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

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

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

53 7. NOTHING IN THIS SECTION PROHIBITS ANY PERSON, FIRM OR CORPORATION  
54 WHO HAS POSTED OR DISPLAYED A SIGN OR ADVERTISING MEDIUM IN COMPLIANCE  
55 WITH THIS SECTION FROM DISPLAYING ADDITIONAL PRICING SIGNS, PROVIDED  
56 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-i to read as follows:

S 192-I. 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, 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. 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.

C. 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.

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

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

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

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

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

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

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

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