

7548

I N S E N A T E

May 9, 2016

Introduced by Sen. KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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,
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

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

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1 A HEAVY TYPE FACE OR STROKE, SHALL BE CLEARLY VISIBLE, AND OF A COLOR OR
2 TINT THAT WILL CONTRAST THE LETTERS, WORDS, FIGURES, OR NUMERALS WITH
3 THE BACKGROUND OF THE ADVERTISING MEDIA. THE HEIGHT OF THE LETTERS,
4 FIGURES, AND NUMERALS, EXCEPT THE LETTER "L" AND NUMERAL ONE, SHALL NOT
5 BE MORE THAN TWICE THE WIDTH.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 B. THE PROVISIONS OF THIS SECTION MAY BE ENFORCED CONCURRENTLY BY THE
54 DIRECTOR OF A MUNICIPAL CONSUMER AFFAIRS OFFICE, OR BY THE TOWN ATTOR-
55 NEY, CITY CORPORATION COUNSEL, OR OTHER LAWFUL DESIGNEE OF A MUNICI-

1 PALITY OR LOCAL GOVERNMENT, AND ALL MONEYS COLLECTED UNDER THIS SECTION
2 SHALL BE RETAINED BY SUCH MUNICIPALITY OR LOCAL GOVERNMENT.

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

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

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

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

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

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

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