

# STATE OF NEW YORK

5222

2017-2018 Regular Sessions

## IN ASSEMBLY

February 7, 2017

Introduced by M. of A. DINOWITZ, PAULIN, JAFFEE, ROSENTHAL, M. G. MILLER, COLTON, GALEF, LAVINE, WEPRIN, GUNTHER, HOOPER, BUCHWALD, SEPULVEDA, SKOUFIS, DILAN, ZEBROWSKI, BARRETT, ARROYO, GOTTFRIED, McDONOUGH, MONTESANO -- Multi-Sponsored by -- M. of A. COOK, LENTOL, MAGEE, PERRY, RA, STECK -- 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:

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

§ 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, 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 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

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

LBD03794-01-7

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.

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.

§ 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.

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

§ 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

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  
3 offense.

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  
36 weights and measures, as the case may be, and in the city of New York by  
37 the department of consumer affairs.

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 § 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.