STATE OF NEW YORK

1561

2017-2018 Regular Sessions

IN SENATE

January 10, 2017

Introduced by Sen. AVELLA -- 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 requiring an advertising medium present at any premises offering the sale of motor fuel

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 include, but not be limited to, a banner, sign, placard, poster, streamer, and card.

2. Every person, firm or corporation offering for sale or selling any motor fuel to the public from any place of business shall display on the premises an advertising medium which complies with the requirements of this section and which advertises the prices of the three major grades of motor fuel offered for sale. The advertising medium shall be clearly visible from the street or highway adjacent to the premises. When the place of business is situated at an intersection, the advertising medium shall be clearly visible from each street of the intersection. For the purposes of this section, motor fuel does not include propane.

3. a. It is unlawful for any person, firm or corporation to display any advertising medium which indicates the price of motor fuel unless the advertising medium displays all of the following:

(1) The price per gallon, including all taxes, in numerals, and fractions when applicable, not less than six inches in height and of uniform size and color. For the purpose of article sixteen of the agriculture and markets law, fractions are considered one numeral;

(2) The trademark or brand of the motor fuel in letters, figures, or numerals not less than one-third the size of the numerals designating the price;

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

LBD00643-01-7

(3) The word "gasoline" or the name of other motor fuel in letters not less than one-third the size of the numerals designating the price, but these words need not be more than four inches in height; and

(4) The grade designation of the motor fuel in letters or numerals not less than one-sixth the size of the numerals designating the price, but this designation need not be more than four inches in height.

b. (1) It is unlawful for any person, firm or corporation to display an advertising medium which advertises a discount or price reduction for motor fuel, unless the advertising medium contains all the following:

(i) The price per gallon from which the discount or price reduction is to be taken;

(ii) The amount of the discount or price reduction in cents per gallon using numerals which do not exceed the height of the numerals in the advertised price; and

(iii) The conditions of the discount or price reduction using words whose letters are not less than one-third the size of the price numerals.

(2) Any limitations under which the discount or price reduction is offered shall be explained in words whose letters are not less than one-third the size of the numerals indicating the prices.

(3) There shall be available for each customer's reference, a chart showing the amount of discount in one cent increments, or the retail dispensers used to dispense fuel at the discount price shall be set to compute the total sale at the discounted price per gallon and shall be clearly labeled "Includes Cash Discount" in letters not less than one inch in height.

c. It shall be unlawful for any person, firm or corporation to display on or near the premises of any place of business in this state any advertising medium which advertises the price of motor oil offered for sale without conspicuously showing on the same advertising medium the brand of the motor oil and the name of the product. The letters, figures and numerals used to designate the brand and the name of the product shall not be less than one-half the size of the numerals designating the price.

d. It is unlawful for any person, firm or corporation to place any additional advertising matter on any advertising medium subject to the requirements of article sixteen of the agriculture and markets law except:

(1) A description of the products offered for sale in letters or numerals not larger than the price numerals;

(2) Methods of sale, such as self-serve or full-serve, in letters not less than one-third the size of the price numerals; or

(3) Words describing the type of services offered at the place of business, such as food market, carwash, tune up, and the registered trademark or trade name of the service, but not the price of the service.

This subdivision does not apply to electronic changeable message centers when the advertising content includes both the product offered for sale and its price in a single advertising message, or when the product and price components of the advertising message clearly relate to one another and the price neither starts nor ends the message.

e. If any motor fuel or motor oil is advertised for sale, but not under any brand designation, the words "no brand" shall be used on the advertising medium as a brand designation.

4. In the event that the same grade of motor fuel is sold at different prices from any single place of business, it is unlawful for any person,

firm or corporation to display any advertising medium which advertises a price of a grade of motor fuel unless the advertising medium advertises in numerals of equal size each of the higher prices, including all taxes for which the grade is sold or offered for sale, and unless the advertising medium explains the conditions, and any limitations, under which that grade is sold or offered for sale at different prices. The words of explanation shall be clearly shown in letters at least one-third the size of the numerals indicating the prices. The different prices at which the same grade of motor fuel is sold or offered for sale shall be advertised as permitted or required by article sixteen of the agriculture and markets law.

5. All letters, words, figures, or numerals which are part of the advertising media referred to in article sixteen of the agriculture and markets law 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.

6. 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 fifty dollars for each day such failure occurs.

b. The provisions of this section may be enforced concurrently by the director of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected under this section shall be retained by such municipality or local government.

c. No person, firm or corporation offering for sale or selling any motor fuel to the public shall be guilty of the infraction specified in paragraph a of this subdivision if that person, within seven days after receiving notification from the director of a municipal consumer affairs office, or the town attorney, city corporation counsel, other lawful designee of a municipality or local government, or attorney general of any violation of this section, makes whatever changes are necessary to comply with the requirements of this section.

7. a. The provisions of this section shall not apply to any person, firm or corporation offering for sale or selling any motor fuel to the public operating within a political subdivision that has already enacted and continues in effect a local law, ordinance, rule or regulation in substantial conformity with this section. The provisions of this section shall not be construed to limit in any way the authority of a political subdivision to enact, implement and continue to enforce local laws and regulations governing the sale of motor fuels that were in effect prior to the effective date of this section, or to enact, implement and enforce any amendments thereto after the effective date of this section. The provisions of this section shall be enforced in the counties outside the city of New York by the county or city director of weights and measures, as the case may be, and in the city of New York by the department of consumer affairs.

b. Any political subdivision may, by ordinance, exempt specified geographic areas for the provisions of this section for scenic or historic preservation purposes upon approval of such exemption by the commissioner.

8. Nothing in this section shall apply to signs or placards required to be posted pursuant to subdivision five of section one hundred ninety-two of the agriculture and markets law. However, any numerals desig-

nating the price per gallon for a particular brand and grade of motor fuel permitted or required under subdivision five of section one hundred ninety-two of the agriculture and markets law shall, unless otherwise stated, be identical in numerical value with the price per gallon for the same brand and grade of motor fuel permitted or required under this section.

9. Nothing in this section prohibits any person, firm or corporation who has posted or displayed a sign or advertising medium in compliance with this chapter from displaying additional signs or advertising media which state either (a) the amount of discount in cents per gallon, or (b) the price of one or more brands or grades of motor fuel sold or offered for sale, provided the conditions and any limitations of the discount or price of the brand or grade of motor fuel are included in the additional advertising media in letters not less than one-third the size of the numerals indicating the discount or price.

§ 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 discount for cash is offered from a dispensing device computing only at the credit price, at least one sign or label shall be conspicuously displayed on the dispenser indicating that the dispenser is computing at the credit price and indicating the amount of the discount per gallon 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 include, but not be limited to, a banner, sign, placard, poster, streamer, and card.

2. Every person, firm or corporation offering for sale or selling any motor fuel to the public from any place of business shall display on the premises an advertising medium which complies with the requirements of this section and which advertises the prices of the three major grades of motor fuel offered for sale. The advertising medium shall be clearly visible from the street or highway adjacent to the premises. When the place of business is situated at an intersection, the advertising medium shall be clearly visible from each street of the intersection. For the purposes of this section, motor fuel does not include propane.

3. a. It is unlawful for any person, firm or corporation to display any advertising medium which indicates the price of motor fuel unless the advertising medium displays all of the following:

(1) The price per gallon, including all taxes, in numerals, and fractions when applicable, not less than six inches in height and of uniform size and color. For the purpose of this article, fractions are considered one numeral;

(2) The trademark or brand of the motor fuel in letters, figures, or numerals not less than one-third the size of the numerals designating the price;

(3) The word "gasoline" or the name of other motor fuel in letters not less than one-third the size of the numerals designating the price, but these words need not be more than four inches in height; and

(4) The grade designation of the motor fuel in letters or numerals not less than one-sixth the size of the numerals designating the price, but this designation need not be more than four inches in height.

b. (1) It is unlawful for any person, firm or corporation to display an advertising medium which advertises a discount or price reduction for motor fuel, unless the advertising medium contains all the following:

(i) The price per gallon from which the discount or price reduction is to be taken;

(ii) The amount of the discount or price reduction in cents per gallon using numerals which do not exceed the height of the numerals in the advertised price; and

(iii) The conditions of the discount or price reduction using words whose letters are not less than one-third the size of the price numerals.

(2) Any limitations under which the discount or price reduction is offered shall be explained in words whose letters are not less than one-third the size of the numerals indicating the prices.

(3) There shall be available for each customer's reference, a chart showing the amount of discount in one cent increments, or the retail dispensers used to dispense fuel at the discount price shall be set to compute the total sale at the discounted price per gallon and shall be clearly labeled "Includes Cash Discount" in letters not less than one inch in height.

c. It shall be unlawful for any person, firm or corporation to display on or near the premises of any place of business in this state any advertising medium which advertises the price of motor oil offered for sale without conspicuously showing on the same advertising medium the brand of the motor oil and the name of the product. The letters, figures and numerals used to designate the brand and the name of the product shall not be less than one-half the size of the numerals designating the price.

d. It is unlawful for any person, firm or corporation to place any additional advertising matter on any advertising medium subject to the requirements of this article except:

(1) A description of the products offered for sale in letters or numerals not larger than the price numerals;

(2) Methods of sale, such as self-serve or full-serve, in letters not less than one-third the size of the price numerals; or

(3) Words describing the type of services offered at the place of business, such as food market, carwash, tune up, and the registered trademark or trade name of the service, but not the price of the service.

This subdivision does not apply to electronic changeable message centers when the advertising content includes both the product offered for sale and its price in a single advertising message, or when the product and price components of the advertising message clearly relate to one another and the price neither starts nor ends the message.

e. If any motor fuel or motor oil is advertised for sale, but not under any brand designation, the words "no brand" shall be used on the advertising medium as a brand designation.

4. In the event that the same grade of motor fuel is sold at different prices from any single place of business, it is unlawful for any person, firm or corporation to display any advertising medium which advertises a

price of a grade of motor fuel unless the advertising medium advertises in numerals of equal size each of the higher prices, including all taxes for which the grade is sold or offered for sale, and unless the advertising medium explains the conditions, and any limitations, under which that grade is sold or offered for sale at different prices. The words of explanation shall be clearly shown in letters at least one-third the size of the numerals indicating the prices. The different prices at which the same grade of motor fuel is sold or offered for sale shall be advertised as permitted or required by this article.

5. All letters, words, figures, or numerals which are part of the advertising media referred to in this article 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.

6. 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 fifty dollars for each day such failure occurs.

b. The provisions of this section may be enforced concurrently by the director of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected under this section shall be retained by such municipality or local government.

c. No person, firm or corporation offering for sale or selling any motor fuel to the public shall be guilty of the infraction specified in paragraph a of this subdivision if that person, within seven days after receiving notification from the director of a municipal consumer affairs office, or the town attorney, city corporation counsel, other lawful designee of a municipality or local government, or attorney general of any violation of this section, makes whatever changes are necessary to comply with the requirements of this section.

7. a. The provisions of this section shall not apply to any person, firm or corporation offering for sale or selling any motor fuel to the public operating within a political subdivision that has already enacted and continues in effect a local law, ordinance, rule or regulation in substantial conformity with this section. The provisions of this section shall not be construed to limit in any way the authority of a political subdivision to enact, implement and continue to enforce local laws and regulations governing the sale of motor fuels that were in effect prior to the effective date of this section, or to enact, implement and enforce any amendments thereto after the effective date of this section. The provisions of this section shall be enforced in the counties outside the city of New York by the county or city director of weights and measures, as the case may be, and in the city of New York by the department of consumer affairs.

b. Any political subdivision may, by ordinance, exempt specified geographic areas for the provisions of this section for scenic or historic preservation purposes upon approval of such exemption by the commissioner.

8. Nothing in this section shall apply to signs or placards required to be posted pursuant to subdivision five of section one hundred ninety-two of this article. However, any numerals designating the price per gallon for a particular brand and grade of motor fuel permitted or required under subdivision five of section one hundred ninety-two of

this article shall, unless otherwise stated, be identical in numerical value with the price per gallon for the same brand and grade of motor fuel permitted or required under this section.

9. Nothing in this section prohibits any person, firm or corporation who has posted or displayed a sign or advertising medium in compliance with this chapter from displaying additional signs or advertising media which state either (a) the amount of discount in cents per gallon, or (b) the price of one or more brands or grades of motor fuel sold or offered for sale, provided the conditions and any limitations of the discount or price of the brand or grade of motor fuel are included in the additional advertising media in letters not less than one-third the size of the numerals indicating the discount or price.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.