

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:

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

3 § 396-xx. Advertising medium; motor fuel sales. 1. The term "advertis-
4 ing medium," as used in this section, shall include, but not be limited
5 to, a banner, sign, placard, poster, streamer, and card.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 5. All letters, words, figures, or numerals which are part of the
13 advertising media referred to in article sixteen of the agriculture and
14 markets law shall have a heavy type face or stroke, shall be clearly
15 visible, and of a color or tint that will contrast the letters, words,
16 figures, or numerals with the background of the advertising media. The
17 height of the letters, figures, and numerals, except the letter "l" and
18 numeral one, shall not be more than twice the width.

19 6. a. Failure to comply with the provisions of this section shall
20 subject a person, firm or corporation offering for sale or selling any
21 motor fuel to the public to a civil penalty of up to fifty dollars for
22 each day such failure occurs.

23 b. The provisions of this section may be enforced concurrently by the
24 director of a municipal consumer affairs office, or by the town attor-
25 ney, city corporation counsel, or other lawful designee of a munici-
26 pality or local government, and all moneys collected under this section
27 shall be retained by such municipality or local government.

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

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

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

54 8. 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. However, any numerals desig-

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

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

16 § 2. Subparagraph (iii) of paragraph a of subdivision 5 of section 192
17 of the agriculture and markets law, as amended by chapter 101 of the
18 laws of 1986, is amended and a new subparagraph (iv) is added to read as
19 follows:

20 (iii) where a multiple product dispensing device is capable of
21 dispensing multiple products at multiple prices, then the selling price
22 per gallon [~~may~~] shall be posted thereon with numerals at least one-half
23 that height and one-half that width required by subparagraph (i) of this
24 paragraph, although numerals representing tenths of a cent may be
25 displayed at no less than one-half those dimensions which disclose the
26 selling price per gallon of such motor fuel dispensed therefrom~~[-]; or~~

27 (iv) where a discount for cash is offered from a dispensing device
28 computing only at the credit price, at least one sign or label shall be
29 conspicuously displayed on the dispenser indicating that the dispenser
30 is computing at the credit price and indicating the amount of the
31 discount per gallon in letters and numerals not less than one-half inch
32 high.

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

35 § 192-i. Advertising medium; motor fuel sales. 1. The term "advertis-
36 ing medium," as used in this section, shall include, but not be limited
37 to, a banner, sign, placard, poster, streamer, and card.

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

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

50 (1) The price per gallon, including all taxes, in numerals, and frac-
51 tions when applicable, not less than six inches in height and of uniform
52 size and color. For the purpose of this article, fractions are consid-
53 ered one numeral;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 5. All letters, words, figures, or numerals which are part of the
11 advertising media referred to in this article shall have a heavy type
12 face or stroke, shall be clearly visible, and of a color or tint that
13 will contrast the letters, words, figures, or numerals with the back-
14 ground of the advertising media. The height of the letters, figures, and
15 numerals, except the letter "l" and numeral one, shall not be more than
16 twice the width.

17 6. a. Failure to comply with the provisions of this section shall
18 subject a person, firm or corporation offering for sale or selling any
19 motor fuel to the public to a civil penalty of up to fifty dollars for
20 each day such failure occurs.

21 b. The provisions of this section may be enforced concurrently by the
22 director of a municipal consumer affairs office, or by the town attor-
23 ney, city corporation counsel, or other lawful designee of a munici-
24 pality or local government, and all moneys collected under this section
25 shall be retained by such municipality or local government.

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

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

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

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

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

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

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