

# 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



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

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.