

# STATE OF NEW YORK

500

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. KAMINSKY, SEPULVEDA -- 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 § 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.

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

LBD01189-01-9

1 c. This subdivision shall not apply to discounts or price reductions  
2 not available to the general public, including, but not limited to,  
3 discounts or price reductions provided pursuant to an awards, rewards,  
4 loyalty, or promotional program.

5 3. All letters, words, figures, or numerals which are part of the  
6 advertising media required by subdivision two of this section shall have  
7 a heavy type face or stroke, shall be clearly visible, and of a color or  
8 tint that will contrast the letters, words, figures, or numerals with  
9 the background of the advertising media. The height of the letters,  
10 figures, and numerals, except the letter "l" and numeral one, shall not  
11 be more than twice the width.

12 4. a. Failure to comply with the provisions of this section shall  
13 subject a person, firm or corporation offering for sale or selling any  
14 motor fuel to the public to a civil penalty of up to five hundred  
15 dollars for a first offense, up to one thousand dollars for a second  
16 offense, and up to ten thousand dollars for a third or subsequent  
17 offense.

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

23 5. 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 of agriculture and markets.

42 c. Any person, firm or corporation offering for sale or selling any  
43 motor fuel to the public operating within a political subdivision that  
44 has enacted a local zoning ordinance or local law regarding advertising  
45 mediums that prevent compliance with the requirements of this section  
46 may apply to the commissioner of agriculture and markets for an  
47 exemption from the requirements of this section or a modified compliance  
48 scheme that addresses the issue preventing compliance with the require-  
49 ments of this section. The commissioner of agriculture and markets  
50 shall, following an investigation, at his or her sole discretion,  
51 approve or deny the request for an exemption or modification.

52 6. 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 the agriculture and markets law.

55 7. Nothing in this section prohibits any person, firm or corporation  
56 who has posted or displayed a sign or advertising medium in compliance

1 with this section from displaying additional pricing signs, provided  
2 that such additional pricing signs are of smaller size than the media  
3 required pursuant to subdivision two of this section and the additional  
4 pricing signs do not obstruct or interfere with the required advertising  
5 medium.

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

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

17 (iv) where a cash discount is offered, at least one sign or label  
18 shall be conspicuously displayed on the dispenser indicating the price  
19 per gallon of the fuel after the cash discount. Such sign or label must  
20 display such price in letters and numerals not less than one-half inch  
21 high.

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

24 § 192-i. Advertising medium; motor fuel sales. 1. The term "advertis-  
25 ing medium," as used in this section, shall mean a street sign located  
26 within ten feet of the main entrance of the place of business or as  
27 close as practicable.

28 2. a. In the event that the same grade of motor fuel is sold at  
29 different prices from any single place of business, then the place of  
30 business must have an advertising medium that: (i) complies with this  
31 section; (ii) displays at least the higher of the prices offered for  
32 that grade of motor fuel; and (iii) is a street sign, which is at least  
33 six feet high and four feet wide and at least eight feet off the ground.

34 b. The advertising medium required pursuant to this section shall, to  
35 the extent practicable, be clearly visible from each street or highway  
36 which has a motor vehicle access point to the place of business. When  
37 the place of business is situated at an intersection, the advertising  
38 medium shall, to the extent practicable, be clearly visible from each  
39 street of the intersection. For the purposes of this section, motor fuel  
40 does not include propane.

41 c. This subdivision shall not apply to discounts or price reductions  
42 not available to the general public, including, but not limited to,  
43 discounts or price reductions provided pursuant to an awards, rewards,  
44 loyalty, or promotional program.

45 3. All letters, words, figures, or numerals which are part of the  
46 advertising media required by subdivision two of this section shall have  
47 a heavy type face or stroke, shall be clearly visible, and of a color or  
48 tint that will contrast the letters, words, figures, or numerals with  
49 the background of the advertising media. The height of the letters,  
50 figures, and numerals, except the letter "l" and numeral one, shall not  
51 be more than twice the width.

52 4. a. Failure to comply with the provisions of this section shall  
53 subject a person, firm or corporation offering for sale or selling any  
54 motor fuel to the public to a civil penalty of up to five hundred  
55 dollars for a first offense, up to one thousand dollars for a second

1 offense, and up to ten thousand dollars for a third or subsequent  
2 offense.

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

8 c. Any person, firm or corporation offering for sale or selling any  
9 motor fuel to the public operating within a political subdivision that  
10 has enacted a local zoning ordinance or local law regarding advertising  
11 mediums that prevent compliance with the requirements of this section  
12 may apply to the commissioner for an exemption from the requirements of  
13 this section or a modified compliance scheme that addresses the issue  
14 preventing compliance with the requirements of this section. The  
15 commissioner shall, following an investigation, at his or her sole  
16 discretion, approve or deny the request for an exemption or modifica-  
17 tion.

18 5. The commissioner shall promulgate rules and regulations necessary  
19 or appropriate to carry out the provisions of this section, and shall  
20 make available on the department's website a summary of the provisions  
21 of this section and any regulations promulgated thereunder.

22 6. a. The provisions of this section shall not apply to any person,  
23 firm or corporation offering for sale or selling any motor fuel to the  
24 public operating within a political subdivision that has already enacted  
25 and continues in effect a local law, ordinance, rule or regulation in  
26 substantial conformity with this section. The provisions of this section  
27 shall not be construed to limit in any way the authority of a political  
28 subdivision to enact, implement and continue to enforce local laws and  
29 regulations governing the sale of motor fuels that were in effect prior  
30 to the effective date of this section, or to enact, implement and  
31 enforce any amendments thereto after the effective date of this section  
32 so long as the amendments remain in substantial conformity with this  
33 section. The provisions of this section shall be enforced in the coun-  
34 ties outside the city of New York by the county or city director of  
35 weights and measures, as the case may be, and in the city of New York by  
36 the department of consumer affairs.

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

41 7. Nothing in this section shall apply to signs or placards required  
42 to be posted pursuant to subdivision five of section one hundred nine-  
43 ty-two of this article.

44 8. Nothing in this section prohibits any person, firm or corporation  
45 who has posted or displayed a sign or advertising medium in compliance  
46 with this section from displaying additional pricing signs, provided  
47 that such additional pricing signs are of smaller size than the media  
48 required pursuant to subdivision two of this section and the additional  
49 pricing signs do not obstruct or interfere with the required advertising  
50 medium.

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