



New York Association of Convenience Stores
130 Washington Avenue, Suite 300, Albany NY 12210

TELEPHONE: (800) 33-NYACS or (518) 432-1400

FAX: (518) 432-7400

TESTIMONY OF JAMES S. CALVIN, PRESIDENT
New York Association of Convenience Stores
before the
New York State Senate Standing Committee on Health
HON. THOMAS DUANE, CHAIRMAN
January 22, 2010, 250 Broadway, New York NY

Chairman Duane, Honorable Members of the Committee, thank you for the opportunity to offer the convenience store industry's views on proposed legislation that would outlaw artificial trans fat, require caloric content posting, and impose an "obesity tax" on non-diet beverages.

There are 7,700 neighborhood mini-marts and convenience stores across New York State, all of which sell prepackaged beverages, and many of which sell prepared food under license of the state Department of Agriculture and Markets.

We wish to note that late last year, the Governor received a report from the New York Small Business Task Force he created to help "promote growth and development of small business enterprises" and "reduce regulatory burdens that increase business costs." We hope that these objectives will be carefully weighed against the health-related objectives that are driving the issues that are before the Committee today.

Beverage Excise Tax

This week, in his Executive Budget, Governor Paterson has repackaged his failed soda tax surcharge of 2009 as a new, broader excise tax on sugar-sweetened soda, iced tea, juice, and energy drinks.

I would like to reiterate the convenience store industry's opposition to this initiative, which the Governor says is designed to significantly increase the price of these beverages in an effort to reduce obesity. The tax rate would be nearly 10 times the rate of the state excise tax on beer.

First, we respectfully question why our customers who consume such beverages in moderation should be penalized because of the dietary habits of some of their neighbors.

Second, we respectfully challenge the hypothesis that the best way to curtail obesity is by having cash-strapped consumers pay \$1 billion a year more in taxes to their already bloated state government.

Third, and particularly troublesome to convenience stores, is that the new tax would promote tax *avoidance* at a time when our industry is already crippled by state-sanctioned tax avoidance.

If a tax is sufficient to compel people not to stop buying, or buy less of, a product, then it's also sufficient to compel them to buy the product from readily available sources where they can dodge the tax –neighboring states or Native American enterprises.

Native American retailers already enjoy an enormous price advantage on cigarettes and motor fuel over tax-collecting stores because of the Paterson Administration's refusal to enforce the collection of taxes on their sales of those products to non-Indian customers, in defiance of state law. A higher tax differential on sugar-sweetened beverages would give our customers yet another financial incentive to desert our businesses for lower-tax or no-tax venues.

If for no other reason than to be fair to a tax-collecting retail community that is already subjected to more than its share of unfairness with regard to tax enforcement by the State of New York, we urge the Senate to reject this proposal.

Caloric Content Posting Issue

S.6438, sponsored by Senator Duane, would require the posting of calorie information in retail food establishments that are part of a group of 15 or more locations doing business nationally that offer substantially the same menu items and are franchises of the same parent business, under common ownership or control, or do business under the same name.

First, the bill inappropriately captures some convenience stores that sell prepared food. Those who portray this provision as mirroring the existing New York City law are misinformed; that local law excludes convenience stores.

A convenience chain that operates in New York and Pennsylvania only, and has standard menu items, would fall into the odd definition of “doing business nationally” and thus be subject to the calorie-posting requirement, even though food service may represent only 10 to 15 percent of their business.

Second, while large chain restaurants may already have a system for analyzing caloric content value, convenience stores do not. This would introduce a brand-new cost and regulatory burden on convenience stores – in the midst of a recession and at a time when millions of dollars in new state taxes and fees have been imposed on convenience stores and their customers.

Third, for the sake of uniformity, any legislation of this nature needs to provide for pre-emption of existing and future caloric value posting laws at the city or county level. For small businesses like ours, New York's regulatory landscape is already a confusing patchwork of local laws addressing what are rightfully statewide issues.

Based upon the foregoing, NYACS respectfully opposes passage of this legislation as written, but urges the sponsors to expressly exempt convenience stores and to add a clause pre-empting local laws.

Trans Fat Issue

S.6437, sponsored by Senator Duane, seeks to effectively ban the use of artificial trans fat in any unpackaged food in two stages.

First, it would outlaw the use of oils, shortenings and margarines containing artificial trans fat used in frying or spreads. We do not object to this, inasmuch as there are alternative oils and shortenings available for cooking different food items.

However, the second phase would ban use of artificial trans fat in baked goods and pastries one year from the effective date. This would pose a dilemma for convenience stores that prepare and/or sell fresh baked goods.

First, there are no good substitutes for pastries and cakes that do not adversely affect taste and texture. Second, since the bill exempts prepackaged foods, it places those who make fresh baked goods at a disadvantage because they cannot use artificial trans fat in their recipes, whereas producers of prepackaged baked goods are under no such restriction.

Accordingly, we respectfully urge that this bill, or any other trans fat legislation that may be considered, be amended to exempt baked goods until a suitable substitute can be found.

NYACS thanks you for the opportunity to express opinions on these issues, and for keeping the views of the convenience store community in mind.