

Empire State Restaurant & Tavern Association

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Testimony of

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Before the

New York State Senate Committee on Health

Public Hearing to consider including electronic cigarettes in the existing
Clean Indoor Air Act and regulating liquid nicotine

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Legislative Office Building Hearing Room A

Albany, New York

Chairman Hannon and the Members of the Senate Committee on Health, as you know, I'm Scott Wexler and I'm here today in my capacity as the Executive Director of the Empire State Restaurant & Tavern Association. I've been privileged to serve as Executive Director of the Restaurant & Tavern Association since 1985. The Association represents thousands of small, independent on premises alcohol beverage licensees located throughout the state including restaurants, bars, taverns, hotels, bowling centers and other businesses that sell alcohol for on-site consumption. Thank you for the invitation to provide testimony on behalf of our members to your hearing today.

As the public discussion over the use of e-cigarettes has been engaged I've been struck by the how much the public place vaping bans are supported by folks who base their position on the simple argument that e-cigarettes are just like cigarettes and so they should be treated the same. According to the sponsor's memo, the bill is advanced to "further protect New Yorkers from these from the dangers of these unregulated devices, particularly given that they have not been proven to be safe for use at any age." But our Association does not see it that way.

Our fight over smoking in bars and restaurants was principally over economic concerns – our members feared the business losses they would suffer if smoking was banned. Those fears, were for the most part not realized. There was a short-term dip in overall restaurant and bar sales following the ban that was disproportionately felt by a small segment of the industry – unfortunately they were our members – with the overwhelming majority of businesses having no impact or seeing an increase in sales. But even our members saw their business stabilize or grow after a transition period. So this history informs us not to be concerned about any impact on business from a public place vaping ban.

We object to this bill because of its assault on our members' ability to run their businesses as they please. This is not about our concern about the loss of business. The Association sees this as another attempt by government to dictate how New Yorkers run their businesses and live their lives adding costs to the bottom line and eroding their freedom to operate their business as they desire. And we don't see any evidence that justifies such an intrusive imposition.

The Food and Drug Administration recently proposed a federal regulatory framework for e-cigarettes and they issued a call for the submission of scientific information on e-cigarettes so they can assess the product more fully. Some public health advocates have taken note of smokers using e-cigarettes to reduce or eliminate their tobacco smoking. They note that e-cigarettes have been demonstrated to be as effective a smoke cessation device as nicotine gum or the nicotine patch, that they may be more helpful for smokers given the similarities with smoking tobacco cigarettes and that any use of e-cigarettes rather than tobacco cigarettes is positive even if the smoker doesn't quit smoking.

~~The FDA is the appropriate agency to review the science~~ and make any determinations about the safety or health risk associated with using e-cigarettes and to then let those findings guide the regulation. Once the FDA makes these findings New York State can consider a public place vaping ban in the context of these expert findings. If the FDA determines that there is significant harm to those who use e-cigarettes and/or those around them, there will be a consensus to advance this proposal or something similar. But there's no reason to pre-judge the outcome of

the research and jump to the conclusion that e-cigarettes are an equivalent public health risk as tobacco smoke and enact a public place vaping ban.

Don't take it from me. The FDA's regulatory notice acknowledges that "emerging technologies such as the e-cigarette may have the potential to reduce the death and disease toll from overall tobacco product use depending on who uses the products and how they are used. If such products result in minimal initiation by children and adolescents while significant numbers of smokers quit, then there is a potential for the net impact at the population level be positive."

We hope the New York State Senate has a high bar for infringing on the rights of its citizens and that this imposition on the right to manage your businesses, with little evidence of public need, falls short.

Thank you again for permitting me to share our Association's comments. I look forward to continuing to work with you.