

**Testimony of Melissa Fleischut  
New York State Restaurant Association  
Senate Health Committee  
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*We serve you*

Chairman Duane and members of the Senate Health Committee, I am Melissa Fleischut and I am the Director of Government Affairs for the New York State Restaurant Association (NYSRA).

The New York State Restaurant Association, founded in 1935, is the leading business association for the restaurant industry in New York State. NYSRA and its chapters work to represent, educate and promote the restaurant industry in every segment from quick service to fine dining.

The restaurant industry is an important component of the New York State economy with more than 490,000 employees. According to the National Restaurant Association every \$1 spent in New York's restaurants generate an additional \$.98 in sales for New York's economy and restaurant jobs represent 8% of the total employment in New York State. But, these are difficult economic times and the restaurant industry is suffering as much if not more than other industries. Consumers do not have to eat out. This is a choice they make and they have definitely cut back.

With this background in mind, I am here today to discuss food policy and public health. I am not a public health expert and will only try to discuss these issues from the restaurant industry's perspective. What I do know for sure is that obesity is not a simple issue and there are no simple solutions. I also know that the restaurant industry did not cause obesity and therefore public policy aimed solely at the restaurant industry is not the solution.

During the past 10 years, the restaurant industry has come under fire from the public health community and the press for the food we serve our customers. During those 10 years we have witnessed legislation to require menu labeling, banning of trans fat, and taxation of sugary beverages. Other ingredients such as sodium, caffeine and high fructose corn syrup are now being looked at for their role in creating an unhealthy society. The restaurant industry is getting caught in the middle between a government trying to tell people what to eat and the consumer demand of our customers. Our hope is that a national approach to a healthy diet would occur instead of ingredient by ingredient and locality by locality.

On menu labeling, it is the hope of the New York State Restaurant Association and its members, that the Senate will recognize that there have been significant gains at the federal level to create a national standard for menu labeling. Early in 2009, key members of Congress, the restaurant industry and the health advocates came to an historic agreement to establish a uniform, national menu labeling requirement that would eliminate the need for state and local menu labeling laws.

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Since then, this provision has been passed by both the U.S. House of Representatives and the U.S. Senate as part of the federal health care reform package. While the status of the federal healthcare reform bill is in question, it is the hope of the industry that this negotiated language could be passed as a stand alone bill or as part of whatever final health care legislation is negotiated.

The New York State Restaurant Association supports this uniform, national menu labeling standard instead of a patchwork of state and local laws. A patchwork of laws does not provide consumers with the consistent information they need and forces national companies to keep up with numerous different rules and regulations, which is both difficult and expensive for operators. It is worth noting that while the corporate companies do track all of the various state and local laws and also provide the information to the individual franchisees, it is the local franchisee living and working in New York State who pays the costs of printing and/or installing these new menus and menu boards.

This national standard is supported by more than 77 public health and advocacy groups as well as the National Restaurant Association. Since menu labeling is included in the federal health care reform legislation, it is obviously a top priority for the Congress and the Obama Administration. The negotiated federal legislation also includes a provision that will preempt all local and state menu labeling laws. Therefore, we urge the New York State Senate to join us in our support of a uniform national standard.

If however, the Senate chooses to move forward, we would ask the Senate to note that there are several lessons learned from the localities that have implemented their own menu labeling laws. Despite the best intentions of other localities to copy the New York City menu labeling legislation, often times the regulations get implemented differently. There were numerous provisions of the New York City regulation that were never addressed in the language and therefore left open to interpretation by the Health Department and subsequent health departments from county to county. Some of the items never addressed in the legislation that remain the most contentious issues between the industry and the health advocates include signage requirements for drive thrus, determining how to list alcoholic beverages, promotional items, seasonal items, and whether calories should be listed per serving or per item.

For example, there are several differences between the laws as written in Ulster County, Westchester County, and New York City. The Ulster County legislation requires a median value for menu items offered in different flavors and varieties while the New York City law requires a range showing the minimum to maximum number of calories. For menu items not on display, Ulster County requires the information to be provided in writing at the point of ordering. New York City has no such requirement and Westchester County allows for alternative methods of providing the information such as in store brochure, booklet, kiosk, or other device that is easily accessible to customers.

In another example, for drive-through windows, New York City allows for an adjacent stanchion visible at or prior to the point of ordering. Ulster County and Westchester County have no such language.

Additionally, Ulster County requires food on salad bars, buffet lines, cafeteria service, food display cases or arrangements where food is on display to post calories for each item. This requirement is nowhere in the New York City or Westchester County laws and would expand the food currently required to be labeled beyond either current law.

While these differences may not seem significant at first blush, these disparities between each locality lead to confused consumers and confused franchisees. This also means that each chain restaurant company has to develop different menu boards for each different county. It also means that a small business owner in New York who operates restaurants in different jurisdictions is operating under conflicting sets of laws. That is why it is imperative that any state law preempt all local laws in New York State to provide the consistency needed for consumers and restaurants.

On the topic of a statewide ban on trans fat, the New York State Restaurant Association is not opposed to statewide legislation, but we do have concerns as to how it is written and implemented. One of the recent lessons learned from Albany County is that baked goods are difficult to reformulate. We would encourage the Senate Health Committee to realize this and allow for the necessary time to reformulate such recipes. However, we ask that you not exempt out a segment of the food industry, like bakeries, unless you exempt out all baked goods. Albany County is not enforcing the trans fat ban against bakeries, but it does enforce it against baked goods in restaurants and we think that is unfair. Many Albany restaurants bake their own desserts, rolls, breads and doughnuts on-premise but were not given the same exemption as bakeries.

Another lesson learned from localities banning trans fat is that educating the restaurateur seems to be the key to a smooth transition. The New York City Department of Health and Mental Hygiene provided restaurants with printed educational materials, information on their website and a phone number to call chefs for tips on reformulating recipes. All of these efforts combined with a phase in for baked goods helped make a smooth transition in New York City.

Finally, as to the sugary beverage tax, the New York State Restaurant Association opposed this tax as it was proposed in Governor Paterson's budget last year. We are still in the process of fully reviewing the sugary beverage tax proposed by the Governor in this year's budget, but on initial review, the Association will oppose this version as well.

There is still some confusion over how this tax would truly be implemented. This tax would apply to regular soda syrup and regular soda containers, but not the syrup used in diet soda or diet soda containers. Traditionally, there is one price for soda at a restaurant. The same can be said for juices and other beverages where one product is full sugar and other is diet or reduced sugar. It is going to become more complicated to try to figure out how to differentiate between the different categories and could likely lead to an overall increase in all beverages at restaurants, not just the sugary beverages. Therefore, it raises the question of whether the tax will actually discourage the consumption of the sugary drink.

Further, there is an added economic concern for the restaurant industry because given the current economic environment; a restaurateur will have to decide if passing along this tax to customers

will decrease business. This sugary drink tax as it applies to restaurants will in essence be a tax on the restaurant industry and not a disincentive tax for consumers, which we believe is the true intent of the tax.

I thank you for taking the time today to hear our positions. Should you have any questions, please let me know, and we look forward to working with you on these issues.